

8th edition

# **Divorce and Money**

## **How to Make the Best Financial Decisions During Divorce**

**By Attorney Violet Woodhouse, CFP**  
**with Dale Fetherling**



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|-------------------|----------------------------------|
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## Dedication

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We dedicate this book to . . .

Those grappling with the enormity of divorce and, thus, most in need of guidance.

Our families and friends, who kept us sane through the writing process.

Larry Woodhouse, for his continued friendship, and our children, Brooke and Tyler, all of whom have taught me the value of communication, negotiation, and compromise.

## Thank You

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Endless gratitude goes to our friend and colleague Karen Wenger for her expertise, long hours, and good humor in wrestling with some of the most complicated issues in this book, especially retirement benefits and investments.

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# Table of Contents

|   |                                                                          |    |
|---|--------------------------------------------------------------------------|----|
|   | Introduction: Your Financial Companion<br>During Divorce .....           | 1  |
|   | A Note on Same-Sex Marriage and This Book.....                           | 4  |
|   | If You Are Feeling Overwhelmed .....                                     | 5  |
|   | How to Use This Book.....                                                | 5  |
| 1 | Legal vs. Financial Realities of Divorce.....                            | 7  |
|   | Lessons in Legal Reality.....                                            | 9  |
|   | Your Best Strategy: Think Financially—Act Legally.....                   | 15 |
|   | Legal vs. Financial Stages of Divorce.....                               | 16 |
| 2 | Financial Realities No One Talks About .....                             | 19 |
|   | In Divorce, Everything Takes Longer and Costs More.....                  | 21 |
|   | When You're Connected to Another Person Financially, You're at Risk..... | 22 |
|   | The IRS Is Watching Your Divorce.....                                    | 23 |
|   | Cash Is King .....                                                       | 24 |
|   | You're Playing for Keeps .....                                           | 25 |
| 3 | Emotional Divorce: Managing the “Money Crazies” ...                      | 29 |
|   | Reduce Stress Whenever You Can.....                                      | 31 |
|   | Safeguard Your Sanity .....                                              | 33 |
|   | Watch Out for Sore Spots .....                                           | 33 |
|   | Be Prepared for Bad Scenes.....                                          | 35 |
|   | Develop a Financially Focused Mental Attitude.....                       | 37 |

|   |                                                                        |     |
|---|------------------------------------------------------------------------|-----|
|   | Avoid the “All at Once” Syndrome.....                                  | 37  |
|   | Manage the Ebb and Flow of Emotions.....                               | 38  |
|   | Don’t Let Financial Tasks Overwhelm You .....                          | 40  |
| 4 | The Hardest Part: Is My Marriage Really Over? .....                    | 43  |
| 5 | The Separation: What Happens When One Spouse Moves Out? .....          | 47  |
|   | The Separation Date.....                                               | 49  |
|   | Questions to Ask an Attorney .....                                     | 58  |
| 6 | Closing the Books: What Do We Do With Joint Property?.....             | 61  |
|   | Joint Account Checklist .....                                          | 62  |
|   | Questions to Ask an Attorney .....                                     | 72  |
| 7 | Getting Help: Who Can I Turn To? .....                                 | 73  |
|   | Questions to Consider When Seeking Outside Help.....                   | 75  |
|   | Selecting Professionals to Assist You .....                            | 77  |
| 8 | Financial Fact-Finding: What Must I Know and When Must I Know It?..... | 97  |
|   | Advice to the Terminally Disorganized .....                            | 99  |
|   | If You Think Your Spouse May Be Hiding Assets .....                    | 101 |
|   | Don’t Forget the “Easy-to-Forget” Assets .....                         | 102 |
|   | The W-2 and the Tax Return .....                                       | 106 |
|   | What About the Gifts You Gave Me?.....                                 | 111 |
|   | Financial Facts Checklist .....                                        | 112 |
|   | Questions to Ask an Attorney .....                                     | 112 |

|           |                                                                         |            |
|-----------|-------------------------------------------------------------------------|------------|
| <b>9</b>  | <b>Facing the Future: What Must I Plan For? .....</b>                   | <b>117</b> |
|           | Major Upcoming Life Events .....                                        | 118        |
|           | Anticipated Financial Commitments.....                                  | 119        |
|           | Major Goals That Will Cost Money.....                                   | 119        |
|           | Where Does the Money Come From? .....                                   | 123        |
| <b>10</b> | <b>Protecting Against Risks to Life, Health,<br/>and Property .....</b> | <b>127</b> |
|           | Insurance .....                                                         | 128        |
|           | Property and Estate Protection.....                                     | 134        |
|           | Questions to Ask Your Attorney .....                                    | 136        |
| <b>11</b> | <b>Taxes: How Do I File and Pay? .....</b>                              | <b>139</b> |
|           | Get a Rough Estimate of Your Tax Bill .....                             | 140        |
|           | What Status Can Be Used When Filing Tax Returns? .....                  | 141        |
|           | When in Doubt, File Separately.....                                     | 143        |
|           | What to Know If You File Jointly .....                                  | 147        |
|           | Dividing the Joint Tax Liability—Or the Refund .....                    | 150        |
|           | Tax Issues Involving Temporary Alimony or Child Support .....           | 153        |
|           | Get Your Tax Agreement in Writing.....                                  | 154        |
|           | Questions to Ask Your Tax Adviser .....                                 | 154        |
| <b>12</b> | <b>Property and Expenses: Who Owns and<br/>Who Owes What? .....</b>     | <b>155</b> |
|           | Who Owns What—Marital Property and the Laws of Your State .....         | 156        |
|           | Who Knows What—Using Legal Discovery.....                               | 159        |
|           | Net Worth—What Do You Own and What Do You Owe?.....                     | 160        |
|           | The Difference Between Assets and Income .....                          | 172        |
|           | Cash Flow—Where Does the Money Go? .....                                | 173        |
|           | Questions to Ask Your Attorney .....                                    | 177        |

|           |                                                                             |            |
|-----------|-----------------------------------------------------------------------------|------------|
| <b>13</b> | <b>What Will Happen to the House? .....</b>                                 | <b>189</b> |
|           | Financial Versus Legal Realities .....                                      | 191        |
|           | The House—Keep It, Transfer It, or Sell It? Now or Later? .....             | 192        |
|           | Steps Toward Settling the House .....                                       | 192        |
|           | Questions to Ask Your Attorney or Financial Adviser.....                    | 224        |
| <b>14</b> | <b>Retirement Benefits: Who Gets What? .....</b>                            | <b>227</b> |
|           | Understanding Retirement Plans .....                                        | 231        |
|           | Qualified Domestic Relations Orders .....                                   | 240        |
|           | The Legal Value of Your Retirement Plans .....                              | 243        |
|           | The Financial Value of Your Retirement Plans .....                          | 246        |
|           | Calculating the Financial Value of Plans .....                              | 250        |
|           | Additional Financial Factors Affecting Retirement Plan Divisions .....      | 256        |
|           | The Division Decision: Now or in the Future .....                           | 259        |
|           | Questions to Ask an Attorney .....                                          | 263        |
| <b>15</b> | <b>Financial Investments: How Do We Divide<br/>the Portfolio Pie? .....</b> | <b>267</b> |
|           | Concepts to Consider .....                                                  | 270        |
|           | Steps to a Settlement .....                                                 | 277        |
| <b>16</b> | <b>Evaluating Employee Benefits and Stock Options ....</b>                  | <b>315</b> |
|           | Employee Benefits .....                                                     | 316        |
|           | Stock Options and Nonqualified Deferred Compensation Plans .....            | 321        |
|           | Questions to Ask an Attorney or Tax Specialist .....                        | 330        |
| <b>17</b> | <b>How Will We Divide Debts?.....</b>                                       | <b>331</b> |
|           | General Rules on Who's Responsible for Debt.....                            | 332        |
|           | If You Live in a Community Property State .....                             | 334        |
|           | Listing Your Debts.....                                                     | 334        |
|           | Marital Debts and Bankruptcy .....                                          | 335        |
|           | Dividing Debts at Divorce.....                                              | 347        |

|           |                                                                               |            |
|-----------|-------------------------------------------------------------------------------|------------|
|           | Dividing Debts When There's Nothing to Fight Over .....                       | 348        |
|           | Questions to Ask Your Divorce Attorney .....                                  | 349        |
|           | Questions to Ask a Bankruptcy Attorney .....                                  | 349        |
|           | Online Resources .....                                                        | 350        |
| <b>18</b> | <b>Child Support and Alimony: What Might I Pay or Receive? .....</b>          | <b>351</b> |
|           | Child Support—Legal, Financial, and Emotional Realities .....                 | 354        |
|           | Steps to a Settlement .....                                                   | 357        |
|           | Alimony—Legal, Financial, and Emotional Realities .....                       | 380        |
|           | Steps to a Settlement .....                                                   | 382        |
|           | Questions to Ask an Attorney .....                                            | 401        |
| <b>19</b> | <b>Negotiating and Finalizing the Best Possible Settlement .....</b>          | <b>403</b> |
|           | Have You Done Your Financial Homework? .....                                  | 404        |
|           | Tallying Your Marital Balance Sheet .....                                     | 405        |
|           | How Are the Offers and Counteroffers Made? .....                              | 410        |
|           | How Do You Finalize the Settlement? .....                                     | 414        |
|           | Divorce Ceremonies .....                                                      | 416        |
| <b>20</b> | <b>After the Divorce: How Do I Get From “We” to “Me”? .....</b>               | <b>417</b> |
|           | How Do I Finish the Business of Divorce? .....                                | 418        |
|           | Can I—Or My Ex-Spouse—Change the Settlement? .....                            | 422        |
|           | What Do I Want to Do With My Life? .....                                      | 424        |
|           | If You Find a New Love, Protect Your Old Assets ...<br>and Your Alimony ..... | 430        |
|           | How Can I Move Beyond the Divorce? .....                                      | 433        |
|           | Appendix .....                                                                | 439        |
|           | Index                                                                         |            |



# Introduction

## Your Financial Companion During Divorce

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|                                                 |   |
|-------------------------------------------------|---|
| A Note on Same-Sex Marriage and This Book ..... | 4 |
| If You Are Feeling Overwhelmed .....            | 5 |
| How to Use This Book .....                      | 5 |

*You've just been through the worst week of your life when the person you're divorcing suddenly calls and demands copies of your tax returns for the past five years.*

**Y**ou brown-bag your lunch and take the bus to work so you can make ends meet while the divorce settlement is pending. One day, you receive an unexpected bill in the mail. Your soon-to-be-ex-spouse charged an expensive vacation on your joint credit card, and now you have to pay for it.

No ... divorce is not the best time in the world to deal with money. But it may be the most crucial. In fact, making financial decisions is possibly the most important job you have when a marriage ends.

How can you make the right decisions? How can you deal with tedious financial details when you're going through such a stressful event? Unfortunately, it's hard to find answers to those questions.

Legal advice is plentiful, and therapists or support groups can help you through emotional upheavals. But who can show you how to make sense of your financial life?

That's where this book comes in. It explains what you must know to avoid the financial disasters of divorce. Specifically, this book draws on our years of experience as financial planners to help you understand:

- what you own and owe
- how divorce affects you tax-wise
- how best to divide your property, investments, and other assets
- what can happen to your retirement nest egg or your business when you divorce
- what to do about alimony and child support
- how to prepare for negotiating a final settlement, and
- how to gain financial stability in your new life as a single person or single parent.

Each divorce is different, of course, so we cannot promise to provide complex financial advice for every possible situation you may encounter. But we *can* let you know where—and to whom—you can turn in finding answers for yourself.

As we see it, divorce is a crash course in managing personal finances—a course you must take whether you signed up for it or not. And the first

lesson in that course is to understand that there is a big difference between legal reality and financial reality.

The financial truth about divorce is this—just because you “get it in writing” doesn’t mean you will get it for real. In other words, even though your settlement may be perfectly legal and fair, it can still be costly in financial terms. For example:

*How will you pay for debts that mounted during the marriage if your spouse refuses to come up with his or her share—even if you were not supposed to pay those bills under your settlement agreement?*

*If you leave the division of your property up to the courts, the future tax consequences of your transactions will most likely be ignored. But the IRS will still collect those taxes.*

*What will you do if your spouse agreed to pay child support but is consistently late?*

As you divorce, you must be on the alert for the limitations of the law. Throughout this book, we will show you how to craft a strong financial settlement without ignoring the blind spots of the legal system.

Keep in mind that divorce does not have to be messy and expensive. Even if you have a great deal of property, you need not spend a fortune. One couple we worked with had \$5 million in assets, yet they spent only \$5,000 in legal fees. This couple evaluated their property, analyzed tax consequences, and negotiated fairly.

By contrast, another couple, whose property totaled only \$100,000, ended up spending \$20,000 on attorneys’ fees alone—all because they could not be realistic about their personal finances, and instead let their emotions interfere with reason.

Whether you and your spouse have a little money or a lot, it is important that you look at your divorce from the perspective of financial reality. It means protecting your financial well-being, whether or not your spouse cooperates. Without this perspective, you may one day find yourself painted into a financial corner, saddled with debts or burdened with assets you cannot afford or hope to sell.

The choice is yours. Divorce is painful enough. Don’t let money problems make it worse.

## A Note on Same-Sex Marriage and This Book

In the vast majority of states, same-sex couples aren't permitted to marry or enter into any kind of state-sanctioned legal relationship. But there are some exceptions. In Massachusetts, same-sex couples can get married, and in other states marriage-like relationships are available. In Connecticut and Vermont, civil unions provide rights identical to those of marriage. In California, domestic partnership registration offers most of the same rights and responsibilities as marriage. In Maine, and New Jersey, domestic partnership is also available, but brings fewer rights. And Hawaii offers a "reciprocal beneficiary" relationship status that provides some important rights, but doesn't approach the status of marriage.

There are lots of legal issues raised by same-sex marriage that we don't deal with in this book—the most important being the relationship between a marriage or marriage-like relationship that is allowed by a state, and the way that relationship is treated by the federal government for purposes of both income and estate taxes, Social Security, and other federal laws and regulations. There's also the question of how states that don't have the same rules will treat these relationships if you move to a different state and try to get divorced there.

So, if you're in a same-sex marriage or marriage-like relationship and you're splitting with your partner, there are some things that this book won't help you with. You should consult with a lawyer who has experience in dealing with same-sex relationships for advice about how to deal with retirement plans, taxes, and Social Security benefits, all of which are governed by federal law. But there's no reason you can't use this book to get the lay of the land, begin making important decisions about your financial future, and start moving forward in your divorce process.



**Learn more about same-sex relationships.** For details on civil unions and domestic partnerships rights, see [\*A Legal Guide for Lesbian & Gay Couples\*](#), by Hayden Curry, Denis Clifford, and Frederick Hertz (Nolo).

## If You Are Feeling Overwhelmed ...

*Congratulations. You're normal.* Feeling overwhelmed is a very common experience during divorce. Even people who are extremely capable under other circumstances may suddenly find it difficult to balance a checkbook or perform a simple task.

If that happens to you, try to slow down.

Although every divorce is different, the process seems to have one universal effect: temporary paralysis. Whether you're a hard-driving executive or a stay-at-home spouse, in the midst of a traumatic separation, competent people become immobilized by the gravity of the financial questions they face. Should the house be sold? How much alimony will be awarded? What will happen at tax time? Who will support the children?

Feeling overwhelmed, confused, angry, or depressed—these are normal responses to the stress of divorce. Our advice, as with any major undertaking, is to break it down into small, manageable pieces. And because the hectic pace of life today puts so many demands on your time, we present this plan in step-by-step segments. When you complete several small goals each day, you are less likely to become overwhelmed and immobilized. That feeling of accomplishment helps you stay out of the crisis mode and works to your benefit both emotionally and financially.

## How to Use This Book

Before you jump ahead and try to figure out what your house is worth or what you will need to do about alimony or child support, we recommend that you read Chapters 1 and 2, which give the framework on legal and financial reality that you *must* understand as your divorce progresses.

For tips on dealing with emotional upheavals, read Chapter 3.

Chapters 4 through 7 cover “The First 30 Days” and are especially important if you are in the initial stages of divorce. Chapters 8 and 9 help you start gathering financial data and thinking about the future.

In Chapters 10 through 12, you begin to seriously evaluate your assets, debts, income, and expenses. Whether you are a “do-it-yourselfer” or you consult an attorney, you must figure out what you own and owe, and what it costs you and your family to live. We've provided several worksheets in Chapter 12 to help you.

Chapters 13 through 16 cover specific assets—family home, retirement benefits, investments, and other employee benefits. Chapter 17 deals with your debts. And in Chapter 18, you will evaluate the likelihood of paying or receiving alimony and/or child support—and in what amounts.

Your analyses and calculations from Chapters 12 through 18 are brought together in Chapter 19 to help you structure your final settlement. Finally, Chapter 20 gives you guidelines for establishing a healthy financial life once the marriage has officially ended.

### Icons Used in the Book



**Fast Track.** We use this icon to let you know when you can skip information that may not be relevant to your case.



**Warning.** Our warning icon alerts you to financial pitfalls during divorce or other information that needs emphasizing because of the potential consequences.



**Attorney or Other Professional.** This icon lets you know when you probably need the advice of an attorney or other professional.



**Steps.** This icon alerts you to a series of tasks designed to help you reach certain decisions.



**Additional Resources.** When you see this icon, a list of additional resources that can assist you in researching a particularly technical point follows.



**Time.** This icon lets you know it's time to make a decision about how to divide your assets.



**Internet.** This icon alerts you to websites that may be helpful.

# Legal vs. Financial Realities of Divorce

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|                                                         |    |
|---------------------------------------------------------|----|
| Lessons in Legal Reality .....                          | 9  |
| Most Divorces Are Settled Out of Court .....            | 10 |
| Divorce Law Is Local .....                              | 11 |
| Don't Expect the Legal System to Take Care of You ..... | 12 |
| Your Future Is in Your Hands—Not the Court's .....      | 13 |
| It's Easier to Write Laws Than to Enforce Them .....    | 14 |
| Your Best Strategy: Think Financially—Act Legally ..... | 15 |
| Legal vs. Financial Stages of Divorce.....              | 16 |

Sooner or later during a divorce, you will discover the one insight that is central to this book *and* to the successful outcome of your settlement:

*Legal reality and financial reality are fundamentally different.*

A seemingly simple idea—but you’d be surprised how long it takes to sink in. To help you understand why this concept is so important, take a few moments to consider the following real-life divorce stories. In each, read the Legal Reality first. Then, see the true outcome in the Financial Reality side.

| <b><i>Legal Reality</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b><i>Financial Reality</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Jonathan and Penny were married for five years before they divorced. During that time, Penny frequently ran their credit cards to the limit buying clothing, and had trouble balancing their checkbook.</p> <p>When they reached the final settlement hearing, Jonathan was greatly relieved when the court made Penny solely responsible for paying the \$10,000 in credit card debts she had accumulated during their marriage. The settlement was included in the final divorce judgment, which made Jonathan feel safe.</p> | <p>After the divorce, however, Penny didn’t pay off the credit cards, and creditors began hounding Jonathan for the money. Jonathan ended up footing the bills, because a divorce settlement assigning debts—even one included in a divorce judgment—cannot change a couple’s original joint obligation to their creditors.</p> <p>Had Jonathan raised the issue before their settlement was finalized, he could have demanded more property in exchange for paying Penny’s debts or insisted that they sell some jointly held property to pay off their creditors.</p> |

*Moral of the story:*

*Getting something “in writing” from the court  
doesn’t always mean you’ll get it for real.*



| <b><i>Legal Reality</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b><i>Financial Reality</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>During their 15-year marriage, Sharon and Bill were committed to building up a good portfolio of stocks and mutual funds for their retirement.</p> <p>Because Sharon avidly followed the market, she wanted to keep a batch of stocks she had recently purchased and asked Bill to take stocks of equal value, which they had purchased early in their marriage. After negotiating over a few other assets, Bill and Sharon reached an agreement in which each of them would receive the exact same dollar amount in cash or assets at the end of the divorce. The court accepted the terms of their settlement, and the books on their marriage were quickly closed.</p> | <p>Sharon paid attention to basic financial facts that Bill ignored: costs and taxes that decrease the value of an asset.</p> <p>Sharon wisely picked the stocks most recently purchased. Because these stocks had not increased substantially in value, the taxable capital gains were low. Bill, however, blithely accepted the older stocks, which had gone up a lot in value since the time of purchase. Even at a capital gains rate of 20%, he owed substantial taxes when he sold the stocks. Had he taken the time to calculate his potential tax burden before agreeing to the settlement, he could have suggested splitting the stocks so that each spouse took half of the older stocks and half of the newer stocks.</p> |

*Moral of the story: A 50-50 settlement isn't always equal.*

## Lessons in Legal Reality

Ending a marriage with no assets or huge debts is the hard way to learn about divorce. Your lessons do not have to be so costly. You would never try to play basketball with football rules or to cook Chinese food using classic French recipes, would you? Similarly, you must learn to follow the correct “rules” for playing in the legal league versus the financial field.

The following five guidelines explain the legal basics of divorce:

- Most divorces are settled out of court.
- Generally, divorce law is local.
- Don't expect the legal system (or a lawyer) to take care of you.
- Your future is in your hands—not the court's.
- It's easier to write laws than to enforce them.

## **Most Divorces Are Settled Out of Court**

You may imagine that you'll have a divorce trial like those on an old *Perry Mason* or *L.A. Law* episode—everything settled in an hour with the “good guys” winning. Perhaps you're waiting for your day in court when you can explain to a wise and kindly judge the exact wrongs your spouse has visited upon you.

Don't count on it.

An estimated 90% of divorce cases are settled without a court trial. Most of your settling will be done through meetings between you and your spouse or between your lawyers, often on the courthouse steps. As the trial date nears, you will quite likely be rushed into conferences in the courtroom hall or coffee shop. In these frantic meetings, your spouse and/or the attorneys may confront you, demanding instant decisions on issues that will affect the rest of your life.

Realize, too, that most divorce courts today are primarily concerned with money, not morals. The main job of the legal system is to resolve property disputes and to ensure the welfare of any children. Spousal misconduct, of course, could affect custody, and economic mischief (such as hiding assets) can change the outcome of the final settlement. But by and large, you will not get a chance to vent feelings about your mate in the courtroom.

The impersonal atmosphere of the legal world may baffle you. But, in fact, it is often to your advantage to stay out of the courtroom. As long as you and your spouse work toward a settlement without involving the court, you can trade property, negotiate terms, and still maintain some measure of control over your destiny. *If you cannot reach a settlement and must have a trial, however, you put your fate into the hands of a judge—a stranger who knows nothing about your children or property.* You'll have to live with whatever that judge decides.

## **Divorce Law Is Local**

Divorce laws not only differ from state to state, but interpretations of divorce law can vary from judge to judge. Whether or not you ultimately hire an attorney or have a court trial, you should ask local lawyers to assess the most likely outcome of a divorce like yours. Ask about the types of settlements local judges tend to approve. Find out how the local courts and individual judges view mediation. Also ask about judges' attitudes toward women or men, and the prevailing mood regarding, for example, joint custody, moving away with the children, or alimony.

Understand, too, that divorce courts are unlike other courts. They are called "courts of equity," which means that the judge has wide discretion in making decisions. While a lawyer can educate you on the law, a lawyer cannot ethically or realistically promise what the judge will do in your case.

You may not like what you hear. A lawyer may tell you that the things you want in your divorce are impossible to get. Another attorney may promise you everything, but ultimately deliver nothing. Interviewing several people for a cross section of opinion can give you a more accurate picture of your situation. (See Chapter 7 for information on hiring an attorney.)

If you know how individual judges normally rule in your locale, your expectations will be more realistic. Even if you don't have a trial to settle matters (remember, 90% of cases are resolved before a trial), divorce lawyers tend to give advice that is consistent with local court rulings. Granted, it's hard to ignore sensational newspaper stories about big-dollar divorces in other parts of the country. But those cases are irrelevant. You must concentrate on what happens in your backyard, because that is where your divorce and your financial future will be decided.

## Affording Attorneys

Throughout this book, we may tell you to “check with an attorney” on various questions. We say this because the individual circumstances of your divorce may require legal information beyond the scope of this book.

But who is going to pay for this costly legal advice?

Attending a brief consultation with a lawyer should not bankrupt you. Organize your thoughts and questions before you seek legal advice so you can save time when the attorney’s meter is running. At an initial visit, spend an hour—not a day. Then go home and think about how much more you may have to spend on an attorney.

In some cases, your spouse may have to pay all or some of *your* lawyer’s fee. The lawyer should be able to advise you about this at the initial consultation.

If you have very little money and feel you truly need advice from an attorney, consider borrowing money, holding a garage sale, or taking a short-term second job to get some money to pay legal fees. As an inexpensive alternative, see whether a local law school or bar association has a divorce clinic where law students can assist you.

For more information on finding—and working with—lawyers, see Chapter 7.

NOTE: Do not let your spouse’s attorney or anyone else chosen by your spouse be the one to represent you. If your spouse is represented by an attorney, you should be also. Except in very limited circumstances, one attorney cannot represent both parties in a divorce action.

## Don’t Expect the Legal System to Take Care of You

One of the most costly illusions in divorce is the idea that the judicial system will protect your rights and meet your needs. You cannot afford to make that assumption. *You* are the one who must make the decisions in your divorce, because *you* are the one who will have to live with them.

Attorneys and other professionals can help you understand your rights during divorce, but they should not determine what your financial needs will be once the marriage ends. Just because you are “entitled” to a certain

property (say, the house), that does not mean you can afford to keep it. Even though you may want to remain a freelancer, you may have to get a steady job so you can support your family after a divorce. Only you can make these decisions.

Instead of passively going through the motions of divorce, you might do better by adopting the active attitude of an entrepreneur. Businesspeople starting a new company go to lawyers to have them formalize agreements and assess legal risks—not to ask whether or not they are making a smart financial move. The entrepreneur sits down with accountants and financial professionals to crunch the numbers and determine whether a business will turn a profit. Only then, after examining the financial aspects of a venture, do they consult with attorneys about potential legal problems.

Likewise, you must be the one to call the shots in your divorce. Don't expect the legal system to make the decisions that are best for you.

### **Don't Be Afraid to Ask Questions**

Don't be intimidated or afraid to ask questions if something is unclear. One divorcing woman admitted that some of her troubles resulted from her own unwillingness to appear ignorant. In an interview with sociologist Terry Arendell in the book *Mothers and Divorce*, the woman recalled her divorce and commented, "Part of the problem was my own fault. I gave the appearance of being knowledgeable. I knew more about buying property and bank accounts than my lawyer did, but I didn't understand all the tax things. And so I was reluctant to ask some of the things I should have asked."

### **Your Future Is in Your Hands—Not the Court's**

The legal system is not designed to help you with your finances once the divorce is granted. For example, you may legally and fairly split the benefits of a pension plan in a divorce settlement, but when the time comes to retire, you may have less income than you need to live on. The court cannot anticipate or resolve that problem for you.

Further, the implications of future taxes on property are not taken into account in settlement agreements in most states. Generally, only existing—or impending—taxes can be factored into a division of assets. Anything beyond these taxes is considered speculation—and speculation is not normally welcome in the courtroom. For example, if, as part of the divorce settlement, you and your spouse will sell \$40,000 of stock at a profit, the taxes owed on the profit will be factored into the settlement and could be split between you. If you keep the stocks and your spouse gets another asset of the same value, the court will not grant you more at the time of the settlement to cover whatever amount of taxes you may owe in the future.

In short, you cannot leave complex, multifaceted money questions about your future to the one-dimensional perspective of divorce law.

### **Definition: Settlement Agreement**

Throughout this book, we refer to marital settlement agreements, property settlement agreements, settlement agreements, or simply agreements. They all mean the same thing. A settlement agreement is a written contract between you and your spouse outlining how you will divide your property and debts, the amount of alimony and child support, who will pay it and who will receive it, who will have custody of or visitation with the children, and other major issues. If you and your spouse are unable to reach an agreement on these issues (on your own or with the help of a mediator), you will have to go to court to have a judge resolve them. Once these issues are finalized, they are incorporated into the final divorce decree.

### **It's Easier to Write Laws Than to Enforce Them**

Laws concerning child support payments are among the most stringent on the books. Yet every year, millions of parents don't receive the money to which they are legally entitled. Nonenforcement of court orders is one aspect of legal reality for which you must prepare yourself. As you go through each step of your negotiations, ask, "How will I handle this if my ex refuses to abide by the agreement or the judge's orders? What options do I have to enforce this agreement?"

### Covenant Marriages

Three states (Arizona, Arkansas, and Louisiana) provide marrying couples with the option of entering into a “covenant” marriage. A covenant marriage makes it more difficult to get a divorce and is an alternative to a traditional marriage permitting divorce without restrictions. In addition to undergoing premarital counseling prior to their wedding, a couple wanting to end a covenant marriage must wait a full two years before proceeding, and may divorce only for reasons such as adultery or alcoholism. Parties are free to enter into a traditional marriage if they prefer. Opponents claim covenant marriages will force some women to stay in an abusive relationship.

Although most states that have considered covenant marriage laws have rejected them, Arkansas adopted covenant marriage as recently as 2001, and such laws are still pending in several other states.

And most important, “How much will enforcement cost me?”

When you recognize these risks ahead of time, you can take steps to minimize them.

To enforce your divorce agreement, you will probably have to go to court. The process is expensive, time-consuming, and emotionally draining. If at all possible, keep animosity to a minimum after the divorce so that both parents’ custodial or visitation time with the children goes smoothly. In turn, that may make it more likely that your ex will make alimony and child support payments on time.

### Your Best Strategy: Think Financially—Act Legally

Make your financial concerns the centerpiece of your divorce, and work within the framework of the law. That is the most powerful position you can take. If you think financially and act legally, you will be able to anticipate risks and assess your needs, before a financial disaster hits.

No one wants to negotiate for an asset in a divorce and then be unable to sell it because they'd owe too much in taxes. Why should you go through the nightmare of settlement negotiations only to end up losing everything you fought for six months after the divorce is over?

Remember: The legal process of divorce is something you will live *through*—but the financial reality is what you will have to live *with* for the rest of your life.

*In a divorce, it's not what you get that counts—it's what you keep.*

## Legal vs. Financial Stages of Divorce

Use the following table to help understand the relationship between the legal and financial stages of divorce. These stages will be explored in more detail throughout the book. Keep in mind that few divorces will follow the steps in this exact order.



Nolo's website, [www.nolo.com](http://www.nolo.com), contains legal information and resources that will help you through your divorce. In addition, several sites specialize in divorce information. Typically, these sites include forums, message centers, and chat rooms on topics such as custody, mediation, infidelity, parenting, child support, debt, grandparent issues, and divorce in the military. Many contain articles and books on divorce-related subjects and state-by-state explanations of the law. Some can help you find professionals—lawyers, therapists, mediators, or financial advisors—to assist you in your divorce.

Some require small membership fees for full participation.

- [www.aaml.org](http://www.aaml.org)
- [www.divorceasfriends.com](http://www.divorceasfriends.com)
- [www.divorcecare.com](http://www.divorcecare.com)
- [www.divorcecentral.com](http://www.divorcecentral.com)
- [www.divorcedirectory.com](http://www.divorcedirectory.com)
- [www.divorceinfo.com](http://www.divorceinfo.com)
- [www.divorcenet.com](http://www.divorcenet.com)
- [www.divorcesource.com](http://www.divorcesource.com)
- [www.divorcesupport.com](http://www.divorcesupport.com)
- [www.divorcewithoutwar.com](http://www.divorcewithoutwar.com)
- [www.lifemanagement.com/flyingsolo](http://www.lifemanagement.com/flyingsolo)



| <b><i>Legal Stages</i></b>                                                                                                                                                                                                                                                                                                                  | <b><i>Financial Stages</i></b>                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Consult an attorney or do some research at a law library to learn about your legal rights and responsibilities. In particular, investigate how your state's laws regarding separation affect custody, alimony, child support, debts incurred after separation, and increases and decreases in the value of marital assets after separation. | Gather together your financial papers and make copies of all documents. Investigate the financial impact of separation. Close or freeze access to joint accounts. (See Chapter 6.) Open accounts in your own name before filing for divorce.                                |
| Physically separate. For some couples, this means moving apart. For others, it's living in different parts of the house and no longer sleeping together. Additionally, your state law may use its own criteria to define the date of marital separation. Consult with an attorney to determine the rules in your state.                     | Keep track of debts incurred before and after separation, joint bills paid, and improvements made to property during separation. Keep receipts for moving and other expenses. Update insurance as necessary. Think about whether you will file taxes jointly or separately. |
| One spouse files a complaint or petition requesting a divorce. This begins the formal divorce proceedings. The other spouse must file an answer or response.                                                                                                                                                                                |                                                                                                                                                                                                                                                                             |
| One spouse files a request for temporary orders regarding custody, visitation, alimony, and/or child support. The request may also ask that the other spouse pay his or her attorney fees.                                                                                                                                                  | Document all temporary alimony payments made, and write down your agreements about alimony. These payments may be tax deductible as long as there is an agreement in writing or a court order concerning the payments.                                                      |

| <b><i>Legal Stages</i></b>                                                                                                                                                                                                                                                                                                                              | <b><i>Financial Stages</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Conduct legal discovery (the procedures used to obtain information during a lawsuit) or win spouse's cooperation to share documents. Determine the amount of alimony, child support, and attorney fees you will pay or receive, if applicable.</p>                                                                                                   | <p>Conduct financial fact-finding. Complete the net worth and cash flow statements in Chapter 12. Hire a forensic accountant if necessary to search for hidden assets. Analyze your assets and debts—use appraisers, accountants, tax advisors, actuaries, and others to help you assess values, tax consequences, and other risks of keeping or giving up property.</p>                                                                                                                                                                                            |
| <p>Begin settlement negotiations, using one of these possible scenarios:</p> <ul style="list-style-type: none"> <li>• Use mediation to negotiate the settlement.</li> <li>• Negotiate between yourselves.</li> <li>• Negotiate through your attorneys.</li> <li>• If you are unable to settle certain issues, bring those issues to a judge.</li> </ul> | <p>Before settlement negotiations, make a list of all items you want the agreement to cover. Be sure to carefully analyze the tax ramifications and other financial pitfalls of each offer and counteroffer. Reduce attorneys' fees by doing much of the legwork on your own, settling without an attorney, keeping anger out of your negotiations, and avoiding a trial. Remember that a trial can be very expensive. You'll have to pay lawyers' fees as well as the fees of the experts (accountants, actuaries, and the like) whom you bring in to testify.</p> |
| <p>Your marital settlement agreement is drafted to incorporate terms of the settlement or the court order. The agreement is incorporated into the final judgment of divorce.</p>                                                                                                                                                                        | <p>If you settle by agreement, carefully check it against your wish list.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



## Financial Realities No One Talks About

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|                                                                              |    |
|------------------------------------------------------------------------------|----|
| In Divorce, Everything Takes Longer and Costs More.....                      | 21 |
| When You're Connected to Another Person Financially,<br>You're at Risk ..... | 22 |
| The IRS Is Watching Your Divorce .....                                       | 23 |
| Cash Is King.....                                                            | 24 |
| You're Playing for Keeps.....                                                | 25 |

*The true cost of divorce is rarely discussed openly.*

**Y**ou probably know more about negotiating to buy a car than you do about negotiating a divorce settlement. At least when you're buying an automobile, you have an idea of what to expect. Entering a showroom, you see the sticker price on a shiny new car. But that price is not the final one. There's often a "dealer markup." You will have to pay taxes or other fees before you actually drive the car off the lot. And once you get the car home, you will have to spend money on insurance, registration fees, repairs, and maintenance.

In divorce, however, many transactions are conducted as though the "sticker" price were the total cost.

When it comes to property settlements, courts do not consider the taxes, maintenance fees, insurance, commissions, and other expenses that are a normal part of any money exchange today.

Look at the family home, for instance. If you were going to sell your house under any conditions other than divorce, you would plan to fix up the place and pay a commission to a real estate agent (unless you sold it yourself). You might have to repair the roof or get a termite inspection. And once you sell the house, you may have to pay a capital gains tax. Under current tax law, you must pay taxes on any profit beyond the first \$250,000 (\$500,000 if you are married and file jointly with your spouse).

In divorce, however, no one seems to talk about these very real costs that they would routinely discuss under any other circumstances. Spouses commonly pay their ex-partners for a full share of the equity—totally ignoring the other normal costs and benefits, and possible tax consequences, of a house sale. Only after selling the house does one spouse recognize the benefits or risks of carrying these costs alone. In our experience, most people *do* sell the family home. If not at the time of the divorce, the sale is often within five years after the divorce.

*At divorce, you and your spouse are essentially selling everything you own—either to each other or to an outsider.*

If you were making a deal at any other time in your life, you would no doubt consider the hidden or additional costs that might crop up. That is how to handle the financial reality of divorce—looking at your situation

from a realistic perspective that takes many factors into account, especially any tax-related consequences.

Financial reality begins where legal reality ends. To help you close the gap between the two, we provide you with worksheets and instructions on specific issues. We also suggest that you keep in mind five general observations on financial reality. We call them the basic “truths” about money and divorce, and you should refer to them any time you have to make tough decisions:

- In divorce, everything takes longer and costs more.
- When you’re connected to another person financially, you’re at risk.
- The IRS is watching your divorce—even when you’re not.
- Cash is king.
- You’re playing for keeps; don’t sell off tomorrow for today.

## **In Divorce, Everything Takes Longer and Costs More**

One of the universal misconceptions about divorce is the idea that it will be over quickly. Then all the parties can get on with their lives as though nothing happened.

In fact, your divorce can cost more money and take a longer time to settle than you ever imagined. For many couples, the whole process usually takes one to two years—even simple divorces that both parties thought would take only six months. The cost can range from several hundred dollars to several thousand. (One couple we knew took three years, spent \$1 million, and still hadn’t settled when last seen....)

To understand the costly nature of divorce, you must recognize the high price of splitting one economic unit in half. On the surface, an equitable property division would seem to mean each person walks away with half of what was shared by two, and is therefore left with enough to support one.

But in the mathematics of divorce, the equation does not work out that way. Spouses have unequal salaries and earning potential. And many people today live beyond their means. When it comes time to divide one household into two, there is rarely enough money to go around. That holds true as much for young married couples with little property as it does for wealthy couples with assets accumulated over many years. When a catastrophic event such as divorce hits, the fragile economic base for these couples is

torn apart much as an earthquake loosens a house from its foundation, leaving everything in disarray.

Recognizing that everything takes longer and costs more can help you through those moments when you are suddenly faced with an unexpected debt or an unwanted delay in your divorce.

### **Accept the Fact That Money Is Tight**

Maybe you have gotten used to the idea that your divorce will cost you dearly. What do you do with that knowledge?

Be willing to accept a change in your lifestyle. Face it, you may have to borrow money, move, get a second job, or buy a used car instead of a new one. Be prepared for an economic pinch—at least for a while.

You will have to resist the very understandable temptation to splurge when your marriage is ending. The fact that you have to prepare for lean times also means that you must pay special attention to each financial decision you will make in divorce. In the end, the expense of the divorce itself means you must begin conserving your financial resources now.

## **When You're Connected to Another Person Financially, You're at Risk**

This truth seems obvious, yet it's often ignored. Divorcing partners tend to resist or “forget” the fact that they must cut or minimize the financial ties that bind them, or pay for those ties long after the marriage ends.

You are at risk any time you hold a joint interest with, have responsibility with, or are financially dependent upon your spouse or ex-spouse. You have no control over what may happen in the future should your former husband or wife default on payments, commit fraud, go bankrupt, die, or become disabled. Any one of these events could jeopardize your financial future.

There are many reasons for overlooking these risks; simple resistance to change is one of them. If you've been accustomed to a joint checking account for 20 years, it may feel strange to close it. It's possible that the act of reorganizing your financial position will force you to recognize that the

marriage is really over. This can be a difficult period of adjustment if you're having trouble accepting the reality of the divorce.

A spouse may feel overly responsible for the other partner's welfare—and so continue paying for something like a car long after it's appropriate. Resentments over an affair or some other perceived wrongdoing, such as lying, losing money, gambling, or abusing alcohol, can also cause one partner to remain financially entangled with the other.

People often leave themselves at risk with their former partners because they simply do not think about it. As you work through this book and your divorce, we will point out the most common financial risks divorcing couples face and give you tools for protecting yourself. Because your divorce is unique, however, you must stay alert to the risks in your particular case. Identify the areas where you and your spouse could remain connected financially, then work to break those connections whenever possible.

## **The IRS Is Watching Your Divorce**

Throughout the process of a divorce, you must consider the tax implications of each major financial move you make. To you, selling your property may seem like a simple business transaction—but to the Internal Revenue Service, your actions may create something called a “taxable event.” Be sure you're managing those “events” to your best advantage. Factor in tax costs anytime you make a financial decision in your divorce, because someday, the IRS will want to be paid.

As a general rule, a transfer of property between spouses incident to divorce is a nontaxable event. There may be major tax consequences to face in the future, however, when that asset is sold. With anything you keep as part of your settlement, you become solely responsible for the taxes due on all gain (profit) on that asset from the time the two of you originally purchased it.

It is in your interest to consult with tax accountants or other financial professionals who can help you calculate the impact of taxes on your property division.

You will also need to decide how you will file tax returns once a divorce is under way. If you expect refunds on joint returns, decide how you will split the money. Be sure you know how the tax bill will be paid if money

is due. You'll also need to understand the tax consequences of alimony or support payments.

The point is not to become paralyzed with worry about the IRS, but to recognize that your changing marital status definitely affects your tax status. Throughout the rest of the book, we give you guidance and formulas regarding tax matters.



The IRS has made some significant improvements in the area of user-friendliness. The IRS website offers plain-English answers to many different tax questions, at [www.irs.gov](http://www.irs.gov).

## Cash Is King

Quick—which would you rather have:

- a retirement plan that promises to pay \$125,000 in ten years, or \$100,000 today?
- a Mercedes currently valued at \$35,000, or a mutual fund with a current market value of \$35,000?
- a secured note from your spouse promising to pay you \$500 a month for the next five years, or a lump sum payment of \$30,000 today?

The simple answer is: Take the money and run.

Like the proverbial “bird in the hand worth two in the bush,” a dollar you get today is worth more than a promise of one tomorrow. In the examples above, the retirement plan may be riskier than you think, the Mercedes will depreciate and could be expensive to repair, and your spouse might never make good on the promised payments. (While the \$35,000 mutual fund is not exactly in cash, a mutual fund is a liquid asset—it can be converted to cash much more quickly than a car that is depreciating in value.) “Cash is king” holds true whether you are speaking of actual cash or cash-equivalent liquid assets.

Three basic financial concepts explain why cash is king: inflation, the time value of money, and the risk-free nature of cash.

**Inflation.** This is the rise in the prices of goods and services. In brief, your dollar may not be capable of buying as much tomorrow as it will today. Suppose you currently have \$1,000. With an inflation rate as small as



3.5% per year, your \$1,000 would only have the power to buy \$503 in goods in 20 years.

What if you and your spouse agree that you will be paid \$10,000 as part of your settlement? If you're paid at the time of the divorce, you'd get \$10,000 in today's dollars. If you have to wait three years for your money, that \$10,000 will be worth less. Consequently, if you are offered a divorce settlement payment to be collected in the future, you must account for inflation.

**Time value of money.** Quite simply, if your money is working for you today—by growing in a quality mutual fund, producing profits in your business, or even earning interest in a bank account—you are getting more value than if you have to wait until tomorrow to put that money to work. Why should you have to wait, and give your spouse the use of your money for months or years to come? Better to get your payments in cash at the time of the divorce than to miss the opportunity of using your money to best advantage.

**Risk-free nature of cash.** The value of a lump-sum payment doesn't fluctuate and is not taxed upon receipt. That may make it attractive enough for you to accept cash in exchange for getting less than the full amount to which you might otherwise be entitled.

## You're Playing for Keeps

In the rush to reach a settlement, some divorcing couples seek the quickest way out—regardless of the future cost. When the dust settles, mistakes may surface that could cost you far more in money and time.

To manage money effectively, you need alternatives to help solve unexpected problems and to meet your goals. When you trade away long-term options for short-term needs, you're forcing yourself into a corner. You literally take future choices away from yourself. Accepting property without considering maintenance costs and your future lifestyle can strap you with debt for years to come. Agreeing to pay your spouse's bills just to hasten the divorce process may take care of some emotional needs, but it probably does not make sense financially. Nor should you calculate your finances based on a situation or arrangement that hasn't yet come to fruition or that may prove only temporary.

### Women and Men—Divorce and Money

Throughout this book, we aim to provide an objective, professional view of money issues in divorce without regard to gender. We cannot honestly address personal financial realities, however, without giving recognition to the economic conditions of the larger society.

For instance, although the wage gap has been decreasing in recent years, men still earn more than women in the U.S. And divorce can increase the disparity. A 1985 book by sociologist Lenore J. Weitzman, *The Divorce Revolution* (Free Press), reported that in the first year after divorce, women's standards of living decrease by an average of 73%, while men's increase by an average of 42%.

Those figures were disputed in 1996 by Richard R. Peterson, a sociologist at the Social Science Research Council in New York. He found that the drop in women's living standards was much smaller than Dr. Weitzman had calculated. According to the *New York Times* (May 9, 1996), Dr. Peterson reported that after divorcing, women's standards of living decrease by an average of 27%, and men's increase by an average of 10%. He also stated that 9% of the men in the study had their standards of living decline after divorce by an average of 73%.

This debate is significant, because Dr. Weitzman's data have long influenced legislators, policy makers, and media reports on divorce issues. We mention these statistics to encourage both women and men to mentally prepare for the possibility of a reduced standard of living after divorce. Take time to accurately calculate your postdivorce potential income, child care needs, housing costs, and other financial commitments.

Certainly, some individuals have used their divorce settlements as a launching pad to begin a business or pursue an education in order to increase their earning potential. But such an outcome takes careful planning and tough negotiating. Only by pursuing a divorce strategy that focuses on long-term financial interests can most people hope to avoid an economic struggle.

**EXAMPLE:** Marla was divorcing and calculating her cost of living. During the divorce, Marla's mother provided free child care, and Marla assumed that would continue indefinitely. She did not stop to think of what would happen should her mother become unable to babysit. After Marla's divorce was final, her mother found a new part-time job and could no longer care for her grandson. Marla spent a great deal of time and money renegotiating her support payments to reflect her true cost of living.

When you are in the middle of a divorce, obvious problems may be overlooked unless you apply long-term thinking to your divorce decisions. Anytime you feel rushed or pressured, either by your spouse or the legal calendar of your divorce proceedings, take a moment to step back and look at your divorce from a future-oriented perspective. That view should help you withstand the pressures and make more informed decisions.

### Money Is Not Math

Anxieties and phobias about math might hamper your ability to make financial decisions when a marriage ends. Do not feel embarrassed if you are intimidated by columns of numbers and fine-print paperwork. We have purposely simplified the formulas in this book so that everyone can understand the financial information needed at divorce.

Don't worry about mastering math. You need only gather current and accurate information about your financial situation. Getting the right numbers to plug into the formulas is much more important than learning how to make complicated tax or other calculations.

Years ago, computer scientists coined the term "GIGO," which stood for "Garbage In/Garbage Out." If they fed the computer the wrong data (garbage in), they would get the wrong answers (garbage out). Likewise, if you try to calculate your cost of living or the value of your property using outdated information or guesswork, you will end up with "garbage" in your final settlement. So gather the correct data. If you don't want to plug the numbers into the formulas yourself, you can hire a bookkeeper, accountant, or financial planner to work with you.



## Emotional Divorce: Managing the “Money Crazies”

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|                                                    |    |
|----------------------------------------------------|----|
| Reduce Stress Whenever You Can .....               | 31 |
| Safeguard Your Sanity.....                         | 33 |
| Watch Out for Sore Spots.....                      | 33 |
| Be Prepared for Bad Scenes .....                   | 35 |
| Develop a Financially Focused Mental Attitude..... | 37 |
| Avoid the “All at Once” Syndrome .....             | 37 |
| Manage the Ebb and Flow of Emotions .....          | 38 |
| Don’t Let Financial Tasks Overwhelm You .....      | 40 |

*To make the best financial decisions during divorce, you must be aware of the emotional sabotage that can wreck your settlement negotiations.*

**B**e on guard if you find yourself attempting to:

- get even
- get it over with, or
- get back together.

These three “gets”—plotting revenge, rushing through the divorce, or pushing for a reconciliation—will hamper your ability to think clearly and act in your own best interest.

Check your attitude. Do any of the following sound like you?

*“I’m going to get even no matter what it takes. You’re going to pay for what you did to me. Just you wait. I’ll see you in court.”*

It’s normal to be angry during divorce, but if you’re using the “get even” approach, you’ll probably never be satisfied. A settlement may be totally equal according to the numbers on paper, but people with this attitude continue to complain years later. Not only will you harbor bitter feelings, but it’s likely you will use poor judgment on important financial questions if you are motivated by revenge. And your attorneys’ fees will soar.

If you insist on getting even, a court trial will likely cost you *three times* as much as an out-of-court settlement. Besides that, there is no guarantee that an ex-spouse will comply with court orders, or that the court will give you what you want. While you should certainly pursue your legal rights, the judicial system is no place to get satisfaction for your emotional demands.

*“I don’t care what happens. I just want to get it over with.”*

Stop right here. This is a major blind spot. The decisions you make during your divorce will affect you (and your children) for the rest of your life. It’s no time to rush. While you may feel uncomfortable, your financial survival depends on participating in each step of your divorce settlement—regardless of how long it takes. And if you take too many shortcuts, you could find yourself paying for them because of unresolved resentments or unexpected money problems. In a year or two, your emotional life will be different. The financial agreements you make during divorce, however, affect you permanently.

*“Maybe if I don’t cause problems financially, we can work it out. I won’t make waves. I’ll just give in so we can get back together.”*

This is one of the most damaging misconceptions during divorce. Certainly you want to work things out if it’s appropriate and if *both* of you are committed to a fair and equitable settlement. But it’s futile to think that you can save the relationship by surrendering your financial leverage. Why should someone come back into a faltering relationship if you are giving the person everything he or she wants anyway? In any event, if you and your partner do get back together, your relationship will be much healthier if you are on an equal level financially and emotionally.

You may agree with all of the advice you have just read. But in reality, how do you deal with money when you are so involved emotionally with your spouse?

That is the central question you must answer for yourself, and that is what we will help you do throughout this book.

Basically, the better you manage your emotions, the better you will be able to manage your money during divorce. It’s a difficult task. The emotional toll of divorce is so high that therapists and counselors use the label “crazy time” to describe it.

Ironically, you are being asked to make calm and rational financial decisions that will affect the rest of your life at a point when you are under some of the heaviest emotional pressures you are ever likely to experience. Those two tasks—the logical and linear management of money and the release of emotional tension—pull you in opposite directions. Attempting to balance these poles is an insane proposition. No wonder you feel as if you have the “money crazies.”

Your best approach to managing these money crazies is to understand the divorce process in emotional terms and then take action to avoid some of the common pitfalls. Forewarned is forearmed.

## **Reduce Stress Whenever You Can**

You can begin to resolve the financial-emotional struggle of divorce by recognizing just how stressful it is. Research has shown that divorce is second only to the death of a spouse in terms of the amount of stress

produced. Some counselors contend that when other factors such as separation anxiety, moving from a long-term residence, and loss of status are added to the equation, divorce becomes the most stressful event in life.

On top of all this, money is a difficult—sometimes taboo—subject, and even happily married couples can have a hard time talking about it. You may also feel pressure because you now have to take on tasks and responsibilities that were shared, or handled exclusively by your spouse. And most likely, you can no longer “talk things over” with your mate.

Here are some of the ways stress affects you during divorce:

- sleeplessness
- fatigue
- loss of appetite
- inability to cope with routine tasks
- disruption in work patterns
- emotional explosions, and
- frustrations over any challenge, large or small.

You can help combat these conditions by nurturing yourself. Do whatever is necessary for you to take care of yourself. If you have children, good self-care becomes even more important. Your frustrations are less likely to spill over onto the children if you are attending to your own needs.

Have a massage, go out to dinner or a movie, stroll through a museum—those are a few quick fixes that can see you through a rough period. Do not fall back on the excuse that you have little money or time to take care of yourself. Sitting under a tree or watching a sunset costs nothing, and can work wonders on your bruised emotions.

Even if you don't feel like it, try to keep your eating patterns close to normal. Good nutrition can be good medicine for your nerves. Also, exercising is one of the smartest things to do while divorcing. Besides relieving physical tension and helping to fight fatigue, vigorous workouts often improve your mental state.

These stress reduction techniques sound simple on paper—but simple or not, they are crucial to practice. The stress of your divorce will last for a while—you have to learn to live with it and manage it.

## Safeguard Your Sanity

During a divorce, it is important to safeguard your emotional well-being. Spend more time with people who can give you positive reinforcement and less with those who may be critical of you or your divorce. Join a support group or see a therapist if necessary. In the long run, any money you spend on your mental health will be less than you'd lose if you got fired from your job or went on a shopping spree to deal with the money crazies.

Rely more on your phone answering machine or email. Not only can you screen nuisance calls or messages if your spouse is hostile, but you can let others know that you are unreachable when you need to be alone.

There will be days when you feel like talking, and other days when it is the last thing you want to do. You may have just calmed down, and then, when you run into a friend and retell your story, emotions rise again—the catch in the throat, the anger, the frustration. That may be a healthy experience, but if you're feeling that it's "too much," limit your personal conversations just as you would your phone calls.

Take control of your home environment. Clean a closet, paint a room, or move the furniture. There's an almost universal tendency during divorce to think about the past—obsessively and excessively. Most people find it is simply easier to put away the family pictures, the mementos, and the visual cues that can trigger feelings of loss and depression.

You are not only affected by what you see, but also by what you hear. Instead of sitting back and passively allowing a favorite old song to make you sad, reach over and snap off the radio. The same goes for those heart-tugging commercials on television featuring happy couples—change the channel or turn off the TV. You'll be amazed at how good it can feel to exert control over something when so much of your life seems to be out of control.

## Watch Out for Sore Spots

Probably, you already know which financial issues are likely to get you upset. All couples have sore spots—resentments about an unpaid bill, spending sprees, bounced checks, interfering in-laws, loans to relatives, or gifts to a lover.



If you know that you will be dealing with an issue that's been a particular long-term irritation, prepare yourself for it instead of merely reacting to the inevitable pressure. Get a good night's sleep before tackling such a problem, or postpone a confrontation until you feel strong enough to be at your best. Taking these basic steps can go a long way toward reducing the tension in your life. Remember, reducing stress means increasing your ability to make sound financial decisions.

### **"No, We Can't Afford It Now"**

Few parents enjoy denying their children toys, gifts, or other pleasures. During divorce, you may find yourself repeating the phrase, "No! We can't afford it now!" more times than you care to count. Disappointing your children can only add to your level of frustration. But while you may want to protect them from harsh realities, you must also be honest and help your family adjust to the new circumstances.

Your children may be too young to understand the concept of money, much less the lack of it, so you may need an extra supply of parental patience. You can take heart in the fact that millions of couples have divorced, and millions of children have survived it. Teaching children to live on a tight budget may be more valuable in the future than giving in to their every whim today.

## Be Prepared for Bad Scenes

Some emotional problems of divorce offer no easy solutions—when people are under stress, they tend to revert to their base, survival behaviors. That can lead to excessive drinking, shouting matches, and other bad scenes. If someone tends to be absent-minded, selfish, or nagging, those tendencies will be exaggerated when a marriage is ending.

During divorce, couples are facing the psychological task of separating, and consciously or unconsciously look for ways to break their connection to each other. During courtship, partners do everything possible to build the relationship, while in divorce, energy goes into destroying it. The stress, coupled with these “relationship destroying” behaviors, creates many of the horror stories of divorce. The sweet irrational gestures of romance are reversed by the equally ridiculous acts of “vengeance” during separation.

Maybe that will help you understand why your spouse is behaving so badly toward you—even if you thought you’d have a “civilized divorce.”

Being prepared for the actions of someone who is determined to cut off any connection to you—by wiping out the checking account, running off to another state, or ruining the family’s credit—can help you short-circuit potential damage. Seeing bizarre behavior within the framework of the separation process may help you take it less personally. You may even find you are more detached from the short-term drama of divorce and therefore better able to concentrate on the long-term money questions that are important to you.

## Don't Let Threats Throw You

In the process of divorce, your soon-to-be-ex-spouse may try to threaten you in some of these ways:

*"Unless you play this my way, you'll never get a dime."*

Keep calm. Of course the person making such a threat wants to scare and intimidate you and to continue the power plays that have worked in the past. When you hear such statements, tell yourself that coercion won't work. The property will be divided fairly, and support will be awarded in accordance with schedules.

*"I'll go to jail before I'll pay you a dime of support."*

Don't panic. Know that support can be enforced through a wage assignment, which means that your check will come directly from your ex-spouse's employer. If your ex-spouse doesn't work for someone else and falls behind in support payments, there are a number of enforcement methods. Ultimately, failing to pay support can mean a jail term, but most people pay voluntarily before going to jail.

*"I'll quit my job before I'll pay you that kind of money."*

Try to get witnesses to this kind of comment. If you can show a court that your ex-spouse quit a job to avoid support obligations, the court will probably continue support at the same level, and your ex will have to find a way to comply.

*"I will reconcile with you only if you put everything in my name."*

Nice try. If you are going to reconcile, why do you need an agreement that is lopsidedly in favor of the person making such a demand? Be extremely suspicious of such statements, and don't sign anything without consulting your attorney.

If you are on the receiving end of a threat, do not be intimidated to the point of giving in. Ignore threats as best you can and continue to work for a reasonable resolution.

## Develop a Financially Focused Mental Attitude

To combat a devious spouse during divorce, you must develop a strong mental attitude and a solid legal strategy. Certainly you are entitled to feelings of outrage and betrayal. You can utter the cry, “How can you do this to me!?” as much as you want to. In fact, that phrase is a common chorus in divorce cases. Yes, many things that happen in divorce *are* unfair.

But the fact remains that you will have to keep going and keep fighting for your financial life regardless of the injustices, which may be perpetrated by your spouse or your spouse’s attorney. You can stand up for yourself. If you stay focused on the future and the financial realities of your life, you will be in a much stronger position as your divorce progresses.

## Avoid the “All at Once” Syndrome

Most likely, you will experience a wide range of feelings and moods: anger, hatred, elation, excitement, sadness, loss, depression, bitterness, rejection, loneliness, guilt, and hostility. Sometimes it will feel as though you’re experiencing those feelings all at once. In fact, the “all at once” phenomenon seems to be part of the money crazies of divorce.

You may also feel that everything is coming apart all at once. Just as soon as you get the car fixed, the washer or the stove breaks down. One explanation is that you simply notice problems more because of your stressed state. Moreover, by the time most people separate, a great deal of their energy has been focused on the relationship—not on the normal chores that can keep a household running. You may not be in the mood to defrost the refrigerator or check the oil in the car as usual. That lack of maintenance can catch up with you as the machinery in your life begins breaking down.

The all at once syndrome in divorce can manifest itself in other ways as well. Some people decide that while they are changing a mate, they should change everything else in their lives as well. They try to lose weight, quit smoking, get a new job, and redecorate the house, all at the same time. Give yourself time. Go slowly. You will have your hands full just getting through the divorce.

## **Manage the Ebb and Flow of Emotions**

Keep in mind that emotions tend to be experienced in waves. One day you may feel fine; the next day, life is awful. Such fluctuations are common in divorce, and eventually the wave action subsides. Do not attempt to handle important money tasks on the bad days—wait until the storm passes.

Because the level of tension in a divorce is often compared to the stress that accompanies the death of a loved one, some psychologists claim the grief processes are also similar. Elisabeth Kubler-Ross's groundbreaking work on death and dying pinpointed five stages of grief: denial, anger, bargaining, letting go, and acceptance. These stages do not necessarily occur in this order. How you go through these stages is unique to you, but it is important that you experience them.

Marriage counselors note that people who avoid grieving by jumping into a new relationship too quickly are only prolonging the process. Those who do allow themselves to grieve for the marriages they had (or the marriages they wished they had) actually get through their divorces more quickly—and carry less psychological baggage when the marriage is over. As a consequence, they are often able to manage their financial lives better, too.

While the grief processes are similar in death and divorce, some important differences do exist. Social attitudes have changed greatly, but widows and widowers still get more sympathy than those who have divorced. With divorce, too, the door to your relationship does not close with the same finality. You may still have contact with your former spouse for years and go through the grieving process many times as you make contact and separate.

Ambivalence—the love-hate relationship with your former spouse—is common when marriages end. Actually, the push and pull in and out of the relationship characterizes the separation process that began before the actual divorce. Commonly, one person in the relationship becomes discontented before the other, and this “initiator” is usually the one to ask for the divorce.

If your partner was the initiator, don’t be surprised if he or she seems to have already moved on. In fact, that person had a head start on the psychological work needed to separate. Just don’t let yourself lag behind financially, or get pushed into doing something you’re not ready for.

The initiator may already be out the door and pressuring you to “get on with it”—to sign over the condo, to sell the house, to separate the silverware. Meanwhile, you may still be at the “starting gate,” emotionally shocked and dazed, unable to finalize a process you have only begun.

If you initiated the divorce, realize that it is probably in your best financial and family interests to be sensitive to your partner’s rate of accepting the separation. Your negotiations are likely to be more successful if you present your financial proposals to someone who has had a chance to assimilate what is happening in the relationship on a personal level.

Psychologists have found that the hardest part of the divorce process tends to be the time just before the actual physical separation. Tensions often mount dramatically until the real break occurs. Some couples separate and reconnect several times in an attempt to save the marriage. Whatever is happening to you emotionally, continue taking steps to put your financial life in order. Should you and your partner ultimately reunite, your relationship will be stronger if you have not used money as a weapon against each other.

### **Mixed Emotions—Working With Attorneys**

Controlling your emotions is important—particularly when it comes to working with an attorney on your divorce settlement. Remember, your attorney is not your therapist or confidante. As you proceed through this book and through your divorce settlement, be honest with yourself about whether you are being a model client (and one who will save attorney's fees) or a client whom your attorney would like to avoid. The following questions will help you make that determination:

- Have I given my attorney accurate and complete information on time?
- Have I thought through the objectives of my divorce agreement?
- Do I waffle in making decisions or compromises?
- If I'm not clear on a legal issue, do I ask for clarification?
- If I have a disagreement with my attorney, am I willing to talk it through to resolution?
- Do I neglect to cover issues and later blame my attorney for forgetting certain items?
- On a continuum between being a pest and being unavailable, where might I be?
- Am I paying my bills on time?

### **Don't Let Financial Tasks Overwhelm You**

As you move through your divorce, it will be easy to become overwhelmed with the financial details. You may suffer from math anxiety or money phobias. Or perhaps you and your partner shared a complicated financial life, one that will take effort to untangle.

Whatever your feelings, you can get some relief by breaking down your tasks into small steps. Reward yourself for completing an item. Hire a math whiz to help you when necessary. If you are upset, do not hesitate to see a counselor or join a therapy group. That strategy makes much more sense,

and is less costly, than using your attorney as a therapist or asking your friends to help you understand a situation that calls for expert analysis.

Anything you can do to build your self-esteem is important now. Divorce tends to make you feel worse about yourself, and it is easy to confuse money issues with your sense of self-worth. Besides the stress-management techniques already described, you may also find it helpful to keep a journal. Having a notebook handy to jot down feelings throughout the day helps dissipate tense moments. This record can serve as an “invisible calculator” to tally the emotional costs of financial decisions. Tracking feelings and reactions in this way can make it easier to reach those bottom-line decisions.

While it may seem as though the inner turmoil from your divorce will never end, it is a finite process that only takes time. For some people, the process lasts one or two years, while for others, recovery from a divorce may take longer. You are very likely to become a different person in that time, with different needs and attitudes. Keep that in mind as you manage the money crazies of your divorce—and make sure the financial choices you make today will work for you tomorrow.

### **Divorce—On a Spiritual Level**

For some people, divorce stress is more than emotional. It becomes a religious or spiritual crisis. We cannot attempt to address such a crisis in this book. You can, however, contact local churches, synagogues, or clergy members for referrals to divorce ministries.

One note of caution: No matter how you feel about your divorce from the spiritual point of view, you cannot ignore its legal and financial consequences.

For example, one client insisted on working exclusively with attorneys and other professionals who shared her faith. While there is nothing inherently wrong with this, it didn't work in her case. She didn't judge the professionals she hired on their competence or abilities. In the end, she had to go through the costly process of finding a new attorney and accountant to help her complete the divorce.

For more information on selecting professionals, see Chapter 7.





## The Hardest Part: Is My Marriage Really Over?

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*Legally, a final decree from the court marks the termination of your married life.*

**E**motionally, it may be years before you feel complete peace of mind about the end of your marriage. But from a strictly financial standpoint, the marriage ends when you or your spouse begin to take unilateral actions, regardless of the effect on the other person.

It's that moment when one spouse stops acting like a trusted friend or partner and starts putting the other spouse in economic jeopardy. One spouse might empty a bank account, leaving the other with nothing to pay the bills or hire an attorney. Or a soon-to-be-ex might run up debts unbeknownst to the other.

A great deal of financial damage can take place in the early stages of divorce. You must protect your interests whether or not you feel sure the marriage is over.

Couples often go through several phases of splitting up and getting back together before the final break. While you are going through this push and pull of separation, you may find yourself walking a tightrope between conflicting demands and emotions—watching out for your personal property without antagonizing your spouse, or taking care of your individual needs while not letting your spouse off the hook for joint responsibilities.

Eventually, you will recognize when the marriage has reached a point of no return. Even then, you may hold out hope for a reconciliation. There's nothing wrong with hope—as long as you continue taking care of business. That means knowing precisely where your financial interests and risks lie, and what to do about them. The following stories illuminate the dilemma you are in at this stage of divorce—and the danger of ignoring its consequences.

### ***A Happy Ending***

When you're in the midst of a crumbling relationship, it may be hard to believe that resolving money problems can sometimes help clear up other troubling issues in a marriage. Alice came in for a financial consultation and said she was considering a divorce. Although she had always worked outside the home, her husband managed the finances and kept her in the dark. Unwilling to tolerate the situation any longer, Alice began educating herself and learning about the couple's cash flow, taxes, and investments. She also consulted an attorney to assess her legal rights. Secure with her knowledge, she confronted her husband and demanded a greater financial role in the marriage. They argued bitterly and almost divorced at several points along the way. Through patience and counseling, however, they resolved their differences and kept the marriage intact.

### ***An Unhappy Ending***

The infamous Palm Beach divorce of Roxanne and Peter Pulitzer in the 1980s demonstrates what can happen if both parties are not equally committed to a reconciliation. Roxanne claimed that in trying to save her marriage, she lost her financial power and leverage as a mother. Upon receiving divorce papers concerning hearings and proceedings, she said she followed her husband's instructions to throw them in the garbage because he did not intend to end the marriage. Doing just that placed Roxanne at a great disadvantage when her husband did, in fact, continue the divorce proceedings. "I lost the case before it even started," she said once it was over. Instead of focusing on the reality of her situation, she put her energy into reconciliation—and lost.

No one can really predict which marriages will come apart or stay together, because every couple, and the dynamic between them, is unique. If you are still questioning whether you have a viable marriage or not, some options available to you are:

**Counseling.** Now is the time to find out whether your marriage is worth saving. Some people cannot—and perhaps should not—let go until they have explored every avenue of reconciliation. But if your spouse refuses to cooperate, you may have little choice but to accept the inevitable and move on with the divorce.

**Temporary separation.** For some couples, time apart becomes a time for healing. Make a list of your joint obligations and expenses. Through mediation or counseling, you and your spouse may be able to reach agreements about dealing with the practical demands of life while you work on your emotional relationship.



After you give yourself some time to consider this information and your options, you must confront the main decision presented in this chapter: Is your marriage really over? This question is not meant to rush you toward divorce, but rather to help you clarify your position. You can afford to leave some questions open in life—but this isn't one of them. Once you've made this decision it will be significantly easier for you to tackle the hard tasks ahead. But if you're unclear on this, all decisions that follow become much harder to make.

Okay—take a deep breath. Write out your answer below, or speak it out loud to someone you trust. Either way, the time has come to make the decision that only you can.

*Is my marriage really over?*

### **Whatever Stage You're in, Don't Ignore Legal or Financial Realities**



Whether you attempt counseling, a trial separation, or some other method of resolving conflicts in your marriage, do not ignore your financial responsibilities and potential liabilities. Just as you would consider legal notices or documents important at any other time in your life, so, too, must you recognize the serious implications of any legal actions in the early stages of divorce—even if your spouse tries to convince you otherwise. Do not ignore court orders or papers. And, if you have any reason to suspect your spouse is moving assets or taking funds from your joint accounts, you should quickly read Chapter 6 for information on how to protect your interests.



# The Separation: What Happens When One Spouse Moves Out?

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|                                             |    |
|---------------------------------------------|----|
| The Separation Date.....                    | 49 |
| Debts and Credit .....                      | 52 |
| Retirement Plans and Pension Benefits ..... | 53 |
| Income and Income Taxes .....               | 55 |
| Investments and Business Assets .....       | 56 |
| Alimony .....                               | 56 |
| Questions to Ask an Attorney .....          | 58 |

*"I told him I wanted him out by the end of the month."*

*"I can't stand it another minute—I'm getting out of here."*

*"It's over and it would be easier on all of us if you would just go."*

**D**on't be surprised if you find yourself saying—or hearing—any of these statements before you separate. Feelings run high, and emotions seem to dictate the schedule of events in your life. Old arguments and long-held resentments commonly surface in this most difficult period, just before or during the actual physical separation. Power plays may become more troublesome as one of you may try to "force" the other out.

No matter how you feel about your spouse, neither of you necessarily "has to" move—unless you or your children would be in physical danger if your spouse stayed. In such a case, you can get a restraining order from the court, prohibiting your spouse from remaining in the family home. In many states, you may be able to find a kit you can use to do this yourself, without a lawyer's assistance. In other states, however, court clerks must assist you in completing papers to apply for a restraining order. Many women's clinics also provide help—including assistance in applying for restraining orders—for victims of domestic violence. (See the appendix.)

Even when violence is not an issue in your marriage, practical reasons might dictate that one spouse move out. For example, many divorcing couples who live under the same roof find making agreements difficult. If one of the spouses moves out, the divorce often proceeds more smoothly and with less pain.

In the midst of ending a marriage, you may not want to look at your situation in the cold, harsh light of financial reality. But that denial could ultimately cost you thousands of dollars. Before you insist on leaving or having your spouse move out, take a little time to consider the financial consequences of the separation date.

Whether you view this time period as a trial separation (while you continue to work on your marriage) or a separation for real (as in the beginning of divorce), the following information is important to you.

### **Protect Your Rights to Custody of Your Children If You Plan to Move Out**



If you have children, the primary caretaker might want to stay in the family home while the other spouse rents a place, house-sits for someone else, or moves in with a friend. Realize, however, that by moving out of the family home without your children, you could jeopardize your chances of getting physical custody of them. This is because few judges like to change the status quo when it comes to kids. So before you move out, be sure to make arrangements with your spouse as to the conditions under which you will each see the children. Define each parent's schedule with the children, including who will drive them to and from school, softball practice, ballet lessons, and worship services.

If you have any question or doubt about your rights as a parent or feel that you are being pushed away from your children by moving out of the house, be sure to consult an attorney who can help you establish custody arrangements before you move.

## **The Separation Date**

After you think about who will move, the second question becomes even more crucial: when? Depending on your state's laws, the date on which you formally separate can affect your credit, pension benefits, or other assets. Think of that date as a legal benchmark.

Before that date, you and your spouse are still married and are subject to the same laws you've been living under since you first wed. After that date, however, you enter a gray area of financial and legal reality that won't be fully clarified until the divorce becomes final. You have no control over the actions of your spouse in this time period, yet you are still tenuously connected—which means you could potentially be responsible for your spouse's bills. In addition, the value of a retirement plan or other assets can be thousands of dollars more or less at settlement time, depending on whether your state values and defines marital property from the date of separation or the date of divorce.

The definition of the separation date differs among states. This is a question you will need to ask your attorney. In a few states, the separation date is the date you or your spouse physically moves out of your joint residence or conducts life differently, indicating a final breakup of the marital relationship. Other states consider that the separation begins the day you or your spouse files divorce papers. And in other states, the day on which you formally tell your spouse that you intend to get a divorce is the date on which you are considered separated. In either of the latter two situations, couples may continue living together after the separation date, perhaps because neither can afford to move.

The date that's determined to be the date of separation may have financial advantages for one spouse or the other. If you are going to be responsible for the credit card charges your spouse incurred during the marriage, for instance, you'd want the date of separation to be prior to your spouse's shopping spree.

Granted, it's difficult to take such factors into account before you separate. In six months to a year, however, you will have the advantage of hindsight and a different perspective. Instead of having regrets later, take a little time right now to think about how the separation will affect you.

What follows is an overview of how the separation date affects these financial issues:

- debts and credit
- retirement plans and pension benefits
- income and income taxes
- investments and business assets, and
- alimony.

### **D-Days**

During your divorce, you may see or hear these abbreviations used to refer to certain milestones:

DOM.....Date of Marriage

DOS.....Date of Separation

DOD.....Date of Divorce



## If You Must Move

Although you may not like the idea, it's possible that you will have to move from your home. You can make life easier by preparing for the pressures you will face. Moving is stressful at any time; divorce only compounds the stress. Not only are you losing a mate, but you're letting go of a home and all that it has meant to you.

Feelings of separation and abandonment can be exacerbated by anxiety about where you will live next. To cope with your emotional reactions, look at your situation in practical terms, which helps separate real concerns from unfounded fears. Here are a few things to remember:

- Movers often charge a premium for their hectic summer season, while offering lower prices between October and April. The first and last days of the month are also busy times for movers, so you may be able to save money by moving midmonth. The American Movers Conference suggests that you question a mover carefully about rates, liability, pickup and delivery, and claims protection. To move locally, you'll probably be charged an hourly rate or a flat fee. Long-distance movers usually charge by weight and mileage.
- In addition to the cost of the move itself, you'll need money to hook up utilities, phones, and other services. You'll have other "new house" costs like buying kitchen staples, cleaning products, and other basics. Count on eating out a lot, too, before you restock your kitchen or unpack your dishes and pots and pans.
- If you move your children out of state without your spouse's consent, a judge may order you to return the children to the state immediately and could ultimately deny you custody. Judges do not look favorably on parents who move their children away from the other parent, school, friends, and other community ties. Before making such a move, consult an attorney to make sure you do not jeopardize your rights as a parent.
- Under changes created by the Taxpayer Relief Act of 1997, if you move out of the house during the divorce, it can still be considered your principal residence for tax purposes, which affects capital gains taxes. This happens when ownership of the house is transferred to one spouse in a divorce and that spouse moves out. In other words, if you have to move out of the house during the divorce, you can still claim it as your principal residence for tax purposes, as long as you and your spouse have a written agreement about your intention that the house will remain your primary residence.

## Debts and Credit

Bill collectors do not suddenly stop sending their statements just because you are going through a divorce. When you enter the limbo of separation, pay particular attention to its impact on your debts and credit standing.

### Debts

In general, both spouses are responsible for paying debts generated during the marriage. Once the divorce is final, neither is responsible for the debts created by the other. Debts incurred during separation, however, can be tricky. The general rule is that debts incurred after the separation date but before the divorce is final are the responsibility of the spouse who incurred them and must be paid by that person.

One exception is for “family necessities.” For example, if, during the period of separation, one spouse incurs a debt for food, clothing, shelter, or medical care, the other spouse may be obligated to pay a portion of that bill. Children’s expenses, too, usually fall into this category. The law views a spousal support or child support obligation as more important than one to a creditor.

The general rule—that debts generated during separation must be paid by the person who incurred them—does not always protect you, however. If your partner defaults or simply refuses to pay, the creditors no doubt will come after you for payment. Because you were still married when the debts were created, the creditor will assert a right to collect from you. Your only remedy may be to try to get reimbursed by your ex-spouse.

**EXAMPLE:** Janet’s husband, Jim, had dental work done after he moved out of their apartment, but he never paid the bill. Janet did not know anything about his dental work, and Jim left town as soon as the divorce was final. The dentist turned the bill over to a collection agency, which then went after Janet for the money. Eventually she settled the bill, spending lots of her time, energy, and money to resolve the problem.

## Credit

Remember the warning given in Chapter 2: When you're financially connected to someone else, you're at risk. You are responsible for any use of a credit or charge card by either cardholder on a joint account.

Most of the time it is best to close joint credit accounts, because you cannot control your spouse's use of them. But before angrily closing all joint credit accounts, check first to see how your individual credit will be affected by such an action. If you do not have credit in your own name, be sure to establish it before you separate.

There may be certain circumstances in which you'll need joint credit. For instance, if you'll both be buying maintenance items for your house, rental property, or children, it may be convenient to have a joint checking account to which both you and your spouse contribute. You can make a formal written agreement as to how the account will be used and even require that all checks written on the account must have both spouses' signatures. Keep in mind, however, that even though you may need to retain joint accounts, you should not consider starting any new joint financial ventures.



Extensive information on debts, creditors, establishing credit in your own name, and other similar issues can be found in *Money Troubles: Legal Strategies to Cope With Your Debts*, by Robin Leonard, and *Credit Repair*, by Robin Leonard and Deanne Loonin (Nolo). You can also find a variety of informative articles on this subject on Nolo's website at [www.nolo.com](http://www.nolo.com).

## Retirement Plans and Pension Benefits

In most situations, the marital portion of your retirement plan is determined as of the date of your divorce. This means you'll probably be entitled to any growth in the account that occurred during the entire marriage, even if you separate months earlier.

Many companies provide an accounting of retirement benefits only on an annual basis. The amount in a pension fund, profit-sharing plan, or other type of benefit program could differ significantly from one part of a year to the next. By the time your divorce becomes final, a year or two could have passed since your separation, and the retirement fund may have grown by thousands of dollars.

To safeguard your interest, get a copy of the benefit brochure issued by your own or your spouse's employer if possible. It's also helpful to have copies of the actual retirement plan itself or a summary of it. (Chapter 14 covers retirement plans in detail. It includes a letter you can send to request information and give notice of your interest in your spouse's retirement benefit plans.) Because so many factors affect your retirement benefits, it is best to consult an attorney, a financial adviser, a pension plan expert, or an actuary who can analyze your particular situation. (See Chapter 7 for more information on seeking advice from a professional.)

### **Check Your Credit File**

During a separation, it's a good idea to get a copy of your credit report. You're entitled to one free credit report per year. You can order a copy of your report by phone, online, or mail.

Annual Credit Report Service  
P.O. Box 105281  
Atlanta, GA 30348-5281  
877-322-8228  
[www.annualcreditreport.com](http://www.annualcreditreport.com)

You must provide your name, address, Social Security number, and date of birth when you order. You also may be required to provide information that only you would know, such as the amount of your monthly mortgage payment.

If you want additional copies of your credit report within a year, or you need to correct information in your credit report, you'll probably need to contact a credit bureau directly. Contact any of the following:

Equifax  
P.O. Box 740241  
Atlanta, GA 30374  
800-685-1111  
[www.equifax.com](http://www.equifax.com)

### Check Your Credit File (cont'd)

Experian National Consumers Assistance Center  
P.O. Box 2002  
Allen, TX 75013  
888-397-3742  
[www.experian.com](http://www.experian.com)

TransUnion  
P.O. Box 1000  
Chester, PA 19022  
800-888-4213  
[www.tuc.com/creditreport](http://www.tuc.com/creditreport)

If you want to get a combined report that shows what information each of the reporting companies has on you, you can go to any of their websites or to [www.myfico.com](http://www.myfico.com). You can get combined reports and credit reports for a fee.

Your credit report will provide you with valuable information about your outstanding debts. In addition, you'll have the chance to make corrections should there be any errors in your report. The credit bureau will enclose information with your report on how to dispute incorrect information in your credit file, or you can find that information on the website.

## Income and Income Taxes

Under the laws of many states, the income that you earn after the date of separation is yours and yours alone. Therefore, you are solely responsible for the taxes due on this income. Also, the date of your separation may influence your decision to file your income taxes jointly or separately. (See Chapter 11.)

## Investments and Business Assets

Many states value assets at the date of the divorce, not the date of separation. This means that if one spouse moves out of the house and the assets appreciate between that date and the date the divorce becomes final, the spouses will share in the appreciation. The valuation of investments and business assets should be double checked, however, as the rules do vary from state to state.

**EXAMPLE:** Having assets valued from the date of divorce instead of the date of separation cost Harry a bundle. On the date of separation, his extensive portfolio was valued at \$5 million. By the date of the divorce, his holdings had almost doubled because of the stock market boom during the period between separation and divorce. So instead of having to split \$5 million with his soon-to-be-ex-wife, Celeste, he had to share the full \$10 million.

## Alimony

You may not realize it, but your separation date could have an effect on alimony. In many states, a nonworking, dependent, or lower-wage-earning spouse is presumed to be in need of alimony for a longer period of time after the end of a long-term marriage (usually one lasting at least ten years from the date of marriage to the date of separation). If you're a few months shy of the ten-year presumptive period for alimony (or the time length mandated by your state), you may want to stay around to avoid jeopardizing those future payments.

## Social Security Benefits After Divorce

If you were married for at least ten years and are at least 62 years old, you are entitled to Social Security benefits based on your ex-spouse's contributions. These benefits become available after you have been divorced for at least two years. You are entitled to these benefits regardless of whether your ex-spouse claims benefits. Your receipt of benefits will not reduce the benefits payable to your former spouse.

A few additional facts:

- Benefits are based on your ex-spouse's total contributions, not just those made during your marriage.
- If you were married (and divorced) twice and both marriages lasted more than ten years, you can claim benefits through the ex-spouse with the larger Social Security account.
- If you remarry before you reach the age of 60 and stay married to your second spouse, you cannot claim benefits based on your first spouse's account—but you can get benefits on the record of your new spouse.
- If you receive disabled, divorced, widow's, or widower's benefits, your benefits will continue if you remarry when you are age 50 or older.

Because each worker's Social Security file is confidential, you may not be able to find out the status of your spouse's benefits. You can try to get this information by asking your spouse or by contacting the local or national office of the Social Security Administration (SSA). Call 800-772-1213 to get a "Request for Earnings and Benefits Estimate Statement" (Form SSA-7004). You can also visit the SSA website at [www.ssa.gov](http://www.ssa.gov). The site includes downloadable copies of many publications and forms, including Form SSA-7004. Once you have the form, complete it and send it back to the SSA.

If these methods fail, you will probably need a lawyer's help to get information about your spouse's benefits. (See Chapter 12 for information on working with lawyers. For more on different types of retirement benefits, see Chapter 14.)

### Before You Move

Before you move out of the family home, be sure to make copies of those documents referred to in the *Financial Facts Checklist* in Chapter 8. Even if you don't have your spouse's cooperation in this project, it is important that you get the copies. If you must resort to the legal process of discovery (see Chapter 12), your legal bill may run sky high—and there is no guarantee that you will get all the information you may ultimately need.

You should also do an inventory of all shared or individual property. Take photographs or make a videotape to document the condition of property at stake in your divorce. (For more information on dealing with property, see Chapter 6.)

## Questions to Ask an Attorney



As you can see, you'll need to calculate your legal and financial positions carefully before separating. Because the legal definition of the separation date varies from state to state, we cannot explain the nuances of your state's law. But we can provide you with this list of important questions for you to ask your attorney or research at your local law library.

1. Who should move out of the house? Can I be forced to move?
2. In our state, what defines the date of separation? Is it when my spouse:
  - moves out?
  - files for divorce?
  - declares the marriage is over?
3. What other legal or financial ramifications of the date of separation should I know about?
4. Which debts—incurred after the date of separation but before the divorce becomes final—is each spouse responsible for?
5. What date is used—separation date, date of final negotiations, or date closest to the final divorce—to calculate the value of assets?



6. Can the court award alimony to a spouse for an indefinite period?  
If not, when is the court likely to terminate spousal support? Does the court consider the length of the marriage in awarding spousal support?
7. What is the average length of an alimony award in our state?
8. Who should make payments on joint debts during the divorce?
9. Do I have the right to reimbursement for payments I make on joint obligations during the divorce?
10. Can I get divorced before our property is fully divided?



## Closing the Books: What Do We Do With Joint Property?

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|                                                           |    |
|-----------------------------------------------------------|----|
| Joint Account Checklist .....                             | 62 |
| Credit Cards .....                                        | 62 |
| Equity Credit Lines .....                                 | 65 |
| Joint Checking, Savings, and Other Deposit Accounts ..... | 66 |
| Joint Title to Property .....                             | 67 |
| Joint Investments and Other Holdings.....                 | 69 |
| Safe-Deposit Boxes.....                                   | 70 |
| Shared Property and Special Collections .....             | 71 |
| Questions to Ask an Attorney .....                        | 72 |

*Your spouse may not want to ruin you—but his or her actions can still leave you at risk.*

When you and your mate are in the midst of splitting up, you come face to face with a hard fact we've stated before: When you are connected to another person financially, you are at risk. Does that mean you need to rush out in a panic and close all your joint accounts? Not necessarily—it is never wise to act in panic, and only in a handful of divorces do spouses deliberately destroy each other financially. But even if your spouse doesn't purposefully ruin your financial life, he or she can do things that leave you vulnerable.

One way to gauge how much financial damage your spouse could inflict is to measure the level of hostility between you. For example, if you're no longer on speaking terms—or you speak only about the children—you will probably want to act quickly to separate your financial lives.

Even if your divorce is “friendly,” don't count on that goodwill to determine what you should do about joint accounts. Look at your situation objectively. Apply your own common sense and instincts. You should be moving toward eliminating the financial obligations you share with the person you are divorcing. Because income is often reduced—and expenses increased—by a divorce, it may not be possible to cut all connections. Nevertheless, you can still reduce your risks.

## **Joint Account Checklist**

The material that follows should alert you to common trouble spots.

### **Credit Cards**

Before closing joint credit card accounts, be sure you have established credit in your own name, based on your own income. Department stores, for instance, may open an individual account for you when you close a joint one. You may be tempted to include your ex-spouse's income when applying for separate credit. Don't do it. Because you won't be able to use your ex's income to repay your bills, it would border on fraud.

If you don't qualify for credit based on your income, you can apply for a secured credit card. Many banks will give you a credit card if you secure it by opening a savings account. Your credit limit equals a percentage of the amount you deposit into your account. Depending on the bank, you'll be required to deposit as little as a few hundred dollars or as much as a few thousand. Many secured credit cards have a conversion option. This option lets you convert the secured card into a regular credit card (one not tied to a savings account) after a certain time period, if you use the card responsibly.

To find the names of banks issuing secured credit cards, call local banks or check the Internet. Websites that list and evaluate available credit cards are [www.bankrate.com](http://www.bankrate.com) and, for more sophisticated financial folks, the site of the Ram Research Group at [www.ramresearch.com](http://www.ramresearch.com). Whatever you do, don't call a "900" or even an "800" number service that claims "instant credit—no questions asked."

Once you have established your own credit, write simple letters to close any jointly held credit cards or revolving loan accounts. Even if a credit card account hasn't been used for years, close it to prevent your ex-spouse from using it in the future without your authorization. Such letters may not fully protect you from obligation for your spouse's later-incurred debts, but they put the burden on the creditors to take action.

Your credit reports should give you all the information you need to complete the letter suggested below. (See Chapter 5 for information on how to get a copy of your credit report.) Call the lender (a toll-free number is usually on your statement) to confirm the address. Then fill in the creditor's name and address, your account number, your Social Security number, and your signature. Send all letters to creditors by certified mail, return receipt requested, and keep copies for your files.

### Sample Letter for Closing Joint Accounts

Date:

To:

Re: Account number \_\_\_\_\_

Card member \_\_\_\_\_ (your name)

Social Security number \_\_\_\_\_ [   ]

Dear \_\_\_\_\_:

This letter is to inform your company that the above-referenced account is to be closed, effective immediately. At this time, my (husband/wife), (name of spouse), and I are seeking a divorce.

I am requesting a "hard close" of the account so that neither party may incur new charges. If (spouse's name) is the primary signer on the account, s/he does not have my permission to reestablish the card at any time using my name and/or credit.

If you are unable to close this account with only my authorization, you are instructed to terminate my relationship with this credit card account immediately, and any charges made to the account after the date of this letter will be the responsibility of (spouse).

If the account has an outstanding balance, you may keep the account open for billing purposes only, but I request that you keep it inactive so that neither party can incur new charges. Please advise me immediately of any outstanding charges on the account.

Please notify the three major credit bureaus that this account has been "closed by consumer" and kindly send me written confirmation that you have done so.

Thank you for your assistance.

Sincerely,

(Your name)

Most of the time you will have little trouble terminating joint accounts. On occasion, however, a creditor may demand that you pay off the balance first. If you can afford to pay the bill, do so. That's better than leaving the account open and allowing your spouse to run up more debts.

If you can't pay off the entire balance, you can still ask that the account be made inactive while you make payments. This strategy prohibits further charges from being made on the account. Once the balance is paid, the creditor should close the account completely. Most customer service representatives will take care of your request. If you can't make satisfactory arrangements through a customer service representative, however, ask to speak to a supervisor, and continue up the chain of command. Explain that you are going through a divorce and that you are closing out your joint accounts. Remember to put all communications with credit card companies in writing, keep copies, and document your payments.

During your separation, if your spouse uses a joint credit card account (before you get a chance to close it) to charge basic items such as food or clothes, you might be responsible for the payments. (See Chapter 5.)

## **Equity Credit Lines**

A frequently overlooked area of joint financial liability involves equity lines of credit. An equity credit line is an open-ended loan made by a lending institution—usually a bank, savings and loan, or thrift company—against the equity in your home. The lender gets a secured interest in your home, and if you don't repay the loan, the lending institution can force the sale of your house.

Some equity credit lines supply a checkbook that can be used just like a joint checking account. Whichever spouse has the checkbook has access to the money.

If you and your spouse have an equity credit line, pay a visit to your lender. Take a letter with you requesting that the account be closed or frozen because of your divorce. If you have a checkbook, be sure to request that no additional checks be issued. By leaving an equity line of credit open during the divorce, you risk losing your home.

Similar to an equity line of credit is a margin account, offered by stock brokerage firms. You may not want to close a margin account right away, because opportunities to profit from trading may arise during the course of

the divorce. Instead, you and your spouse should make agreements about what kind of activity is allowed, including an agreement that neither spouse may take any funds out of the account without the written consent of the other spouse, or a court order. If one spouse normally does the trading, you can authorize that spouse to continue trading under specified circumstances. Whatever you agree, convey it in a letter to the brokerage firm. When you're closer to finalizing your divorce, you can divide the asset and close the account completely.



Beware of fraudulent loans. If your spouse claims to have borrowed money during your marriage from friends or relatives, proceed with caution. It may be a scheme to snatch joint assets. Here's how it works: One spouse falsely claims to have borrowed money during the marriage, unbeknownst to the other spouse, from a close friend or relative. The false loan is then paid back from joint assets. The friend or relative who receives the money then returns it surreptitiously once the divorce is final, and voilà! What was once a joint asset now belongs only to one spouse. The way to prevent this is to review records showing the flow of money in and out, and check income tax returns to determine whether interest was paid on purported loans to relatives.

## **Joint Checking, Savings, and Other Deposit Accounts**

As with joint credit cards, you may not want to close joint checking or saving accounts unless you have an account in your own name, or will open one immediately. If you don't close a joint account, however, you run the risk that your spouse could come in and empty it without your knowledge.

You have a few options:

- Ask the bank to freeze the account and not allow either you or your spouse to move money in or out without both of your signatures.
- Take out half the money in the account and place it into your individual account.
- Close the account and place all the money into a dual-signature account. You'll probably need an agreement with your spouse to use this option.



If your spouse takes all the money from your joint accounts, your settlement—or a court—will probably provide for your reimbursement. That repayment, however, could be months or years away. Until then, you have to deal with losing your share of a joint account. If you don't have a personal savings or checking account, you may have to borrow money to cover the shortfall.

### **If You Are Broke**

If you're out of money, you're probably safe in withdrawing half of the cash in joint accounts to pay for necessities. But, generally, you'll be required to disclose the liquidation and document what you used it for. (If you have any doubts, ask an attorney.) Of course, there are also the old standby methods of holding a garage sale or calling Mom and Dad. You could also ask for temporary alimony. (See Chapter 9.)

## **Joint Title to Property**

How you hold title to property can be important. There are two ways that are the most common for married people to hold title.

### **Joint Tenancy**

Many couples hold property, especially real property, in joint tenancy. Joint tenancy's major advantage is that when one joint owner dies, the remaining owner or owners automatically inherit the deceased's portion of the property without having to go through the long, expensive probate process. If you don't want your spouse to automatically inherit your share, then change your joint tenancy ownership to tenancy in common.

### **Tenancy in Common**

With tenancy in common, married couples may own equal shares, but upon the death of one spouse, that spouse's share goes to whomever is named in a will or other estate planning document. If you die without a will or other



estate plan, your property passes under the laws of your state. Usually the property is divided between the spouse and/or children, if any; if there is no spouse and no children, it goes to the parents or siblings.

The best way to convert property from joint tenancy to tenancy in common is to secure your spouse's agreement and then change the title together. For example, a couple could transfer their house "from Herbert and Donna Walker as joint tenants to Herbert and Donna Walker as tenants in common." You can obtain a blank deed from a title insurance or real estate office. In California, homeowners can use *Deeds for California Real Estate*, by Mary Randolph (Nolo).

If you cannot find a blank deed, you could simply draft a statement saying, "Herbert and Donna Walker hereby transfer their real property located at 4555 Ellison Boulevard, Fargo, North Dakota, from Herbert and Donna Walker as joint tenants to Herbert and Donna Walker as tenants in common." Be sure you both sign the statement before a notary public. Then record the deed or statement in the office where your original house deed is recorded.

If your spouse will not consent to the change, you can complete the deed or statement yourself. Write, "Donna Walker hereby transfers her interest in the real property located at 4555 Ellison Boulevard, Fargo, North Dakota, from Donna Walker joint tenant to Donna Walker tenant in common." Any one person can unilaterally terminate his or her interest in a joint tenancy. Again, sign it before a notary and record it in the office where your original house deed is recorded.



By closing accounts or serving your spouse with a restraining order, recognize that you are "upping the ante" and increasing the degree of conflict in your divorce. You (and any professional advisers you use) must assess the risks and the consequences, because sooner or later, you will meet your spouse at the negotiating table.



For more details on holding title, see Chapter 12.

## Joint Investments and Other Holdings

Make a list of any investments or other joint assets you can think of. Immediately call your broker, your discount brokerage house, and any other financial institutions involved. Tell them that no assets or money should be moved or transferred without the knowledge and approval of both you and your spouse. Be sure to tell the broker to make a note to the “online” file on the computer. That way, when your spouse speaks to anyone else at the firm, the computer will show that the account has been frozen. Also, if the account has check writing or credit card privileges, specify whether the freeze applies to those transactions. Follow up the call with a letter identifying the person with whom you spoke, noting the date and time of the call, and giving a summary of the conversation.

When it comes to joint investments, you will have to move quickly. Many stock transactions are handled over the phone and, increasingly, electronically through email or the Internet. Your spouse may be the one who normally deals with the broker or discount brokerage house. He or she could make one phone call and, in a matter of minutes, have all of your joint holdings sold and the money transferred out of the account. If you call first to freeze the accounts, you stand a good chance of protecting your interests.

## Separating in Cyberspace

As the Internet grows increasingly sophisticated, more investors are conducting their transactions electronically.

When it comes to divorce, electronic trading operates essentially in the same manner as traditional trading via phones and live brokers. If a spouse sends an email message that accounts should be frozen, then the trading firm should honor that request.

Problems can arise because one spouse often takes responsibility for electronic trading and could buy or sell investments without the knowledge of the other spouse. In some cases, a spouse could punch numbers on the phone or computer pad to sell or buy investments in a matter of minutes. As with any urgent financial matter, contact the brokerage firm immediately if you suspect a spouse of making financial moves that might not be in your interest.

### Sample Letter to Broker

Rodney Washington  
Bull and Bear Investment Company  
3400 Financial Square, Suite 1740  
Boston, MA 02000

November 27, 20xx

Dear Mr. Washington:

This letter is to inform you that my spouse and I are in the process of divorce. Please freeze our account, #12345-67890, so that no transactions occur until further notice. Please make a note to this effect on the firm's "online" file on the computer. This freeze is to be effective immediately, and this letter confirms my instructions to you by telephone on November 24, 20xx.

These instructions apply to the assets in our account as well as [except for or including] the check writing and/or the credit card privileges we currently have with this account.

Yours truly,

Lenore Kwong

### Safe-Deposit Boxes

Just as one spouse can remove all money from a joint checking account, so too can a spouse take all of the items out of a joint safe-deposit box. Unfortunately, safe-deposit boxes are one of those items in which "get there first" is the operative rule. Try to take possession of both keys to the safe-deposit box if at all possible. If your spouse empties the box before you do, you may have little chance of reclaiming the contents.

You might possibly protect yourself if you can get to the box, write an inventory of the contents, and take photos of the items. Then have the bank officer sign the list documenting your inventory. If your spouse removes anything later, you'll have some proof of what was taken.

One of the only ways to legally protect yourself is to get a restraining order from the court and give a copy to the bank. The order would prevent

either spouse from having access to the box until you reach a settlement or the court removes the restraining order.

## **Shared Property and Special Collections**

While your furniture, appliances, and knickknacks around the house may not be as valuable as other assets and investments, this property can cause more irritation and antagonism than almost anything else. Emotions flare up when you reach for a favorite tool only to find it missing or look for your mother's antique brooch and discover it is gone.

To avoid future problems, do an inventory of your home and possessions similar to the kind you would conduct for insurance purposes. Obviously, it will be simpler to do such an inventory while you are still living in the family home and have access to your property—so do it before you move out.

List the contents of each room and photograph or videotape the area for documentation. Your ultimate goal is to divide these items as fairly as possible. Few couples split the small items exactly 50-50, but you still want to have your property appraised so your division is not horribly one-sided. You can get simple estimates of household property values by asking furniture or appliance dealers and auctioneers to visit your home and give you written estimates. Any coin, gold, or other collection should be appraised by a reputable dealer. Realize that these items should be valued at the amount the dealer is willing to pay—not the retail value.

While retail values are useful as a starting point, in reality, collections and property are only worth what you can sell them for. If you are valuing property on your own, use “garage sale” values—that is, if you saw your furniture, microwave, or other property at a garage sale, how much would you really pay for it? The person who will not be getting the household items may only remember the original price tag, not the current value, so you have to insist on using the garage sale price.

In the meantime, jointly owned household property should not be disposed of unless both spouses agree, as neither one owns an item outright until the settlement. You only own your personal, separate property. Your children's property, such as furniture or toys, should be given to the children and not divided in the divorce settlement.

### Financial First Aid for Divorce Emergencies

If a stranger stole your wallet with all the credit cards inside, you'd probably have more protection than if your spouse wipes out your joint accounts. Almost nothing can stop one spouse from closing a joint account without the knowledge of the other. During a divorce, it can come down to who gets there first—to the bank account, the computer files, the brokerage office, or the safe-deposit box.

If you are concerned that your spouse might empty out a joint account or otherwise take assets to which you are entitled, you may need to obtain a temporary restraining order prohibiting the removal, sale, transfer, or other use of the property. Not only can restraining orders be placed against your spouse, but they can also be served on third parties, such as bank managers and others with control over your assets.

Restraining orders are also used to bar a violent or abusive spouse or parent from having contact with the other spouse or children. Domestic violence organizations can help you obtain that kind of restraining order. See the appendix for more help.

## Questions to Ask an Attorney



Closing accounts isn't always a straightforward procedure and can vary from state to state. Below is a list of important questions for you to ask your attorney or research at your local law library.

1. Do any state laws prohibit me from withdrawing half of the cash in our joint accounts or borrowing money on joint accounts?
2. Can I unilaterally change property from joint tenancy to tenancy in common, or must I have my spouse's consent?
3. Would it be advisable to close my joint accounts and move the funds to an account solely in my name or into a joint account requiring both signatures on the checks?
4. Do any state laws prohibit me from canceling or changing beneficiaries on my life or medical insurance policies during divorce?



# Getting Help: Who Can I Turn To?

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|                                                                      |    |
|----------------------------------------------------------------------|----|
| Questions to Consider When Seeking Outside Help .....                | 75 |
| Is the Person Competent and Suited to Handle My Specific Case? ..... | 75 |
| How Is This Professional Paid? .....                                 | 76 |
| What's the Best Use of This Professional's Services? .....           | 76 |
| Am I Evaluating This Professional Objectively? .....                 | 77 |
| Selecting Professionals to Assist You .....                          | 77 |
| Lawyers .....                                                        | 77 |
| Limited Scope Representation or "Unbundling" .....                   | 78 |
| Tips on Working With Your Lawyer .....                               | 79 |
| Mediators .....                                                      | 82 |
| Collaborative Divorce.....                                           | 85 |
| Arbitrators and Private Judges .....                                 | 87 |
| Financial Planners .....                                             | 87 |
| Divorce Financial Analysts .....                                     | 89 |
| Stockbrokers and Money Managers .....                                | 90 |

|                                             |    |
|---------------------------------------------|----|
| Accountants .....                           | 90 |
| Bankers .....                               | 91 |
| Insurance Agents .....                      | 91 |
| Real Estate Agents.....                     | 92 |
| Therapists .....                            | 92 |
| Credit Counselors .....                     | 93 |
| Typing or Paralegal Services.....           | 93 |
| Actuaries .....                             | 94 |
| Business Appraisers .....                   | 94 |
| Private Investigators.....                  | 95 |
| Online Do-It-Yourself Divorce Services..... | 96 |

*During divorce, you're going through a time of transition unlike any other in your life. Everything is changing. No matter how capable you are, you'll need help to get through this transition.*

**E**ven if you have little money and few resources, it's important to get support. Check with local libraries, churches, community organizations, law schools, colleges, or government agencies for low-cost services. In some areas, divorce specialists and centers can advise you for a small fee.

The kind of help you seek will depend on what you need. For some, a personal counselor or therapist is crucial; others want only a temporary adviser to handle financial details. As your divorce progresses, you may also need to call on a variety of specialists ranging from attorneys to real estate agents, credit counselors to appraisers. Because your future is at stake, don't cheat yourself; get the best you can afford. Comparison shop and check references before signing contracts for outside services.

## **Questions to Consider When Seeking Outside Help**

While you need to ask different, specific questions of each service provider you consult, the following four questions are useful for dealing with professionals in general.

### **Is the Person Competent and Suited to Handle My Specific Case?**

Obviously, you want to work with someone who does a good job and can be trusted. Beyond those basic qualities, it's essential to determine that the person's training and services match your needs. In other words, you don't hire a bookkeeper if your situation calls for an accountant to make complex calculations or compute taxes. By the same token, an experienced divorce attorney is better than a lawyer who specializes in business transactions. Interview potential consultants on the phone, or use introductory sessions to outline your case and find out exactly what to expect, before you hire anyone.





If you accept a free session with a lawyer or other professional, realize that you may be pressured into hiring that person. You may be sold a service that you do not want or need. To avoid such problems, clearly state that you are only gathering information in the initial session and do not intend to make a hiring decision until after you have had a chance to sort through the information you receive. Remember, too, the adage that if something sounds too good to be true, it probably is. Be wary of any lawyer who seems to promise you the world, making guarantees that you can get anything you want in your divorce. There are no guarantees.

### **How Is This Professional Paid?**

How a professional is paid—by the hour, on a retainer, or through commissions—inevitably affects you. This is a statement of fact, not a matter of philosophy or morals. If you will be paying by the hour, you must understand how that time will be billed. Does the professional bill in ten-minute, 15-minute, or longer intervals? Are you going to be charged for time on the phone? Does the clock begin to run the minute you walk in the door? Find out.

When people work on commission, their livelihood depends on selling you something. Again, there's nothing wrong with that—you just need to recognize that reality and act accordingly. For instance, when you call for information about insurance coverage, the agent may try to sell you a new policy or different kind of coverage. Only you can decide whether it's appropriate to make such a purchase. Because of the emotional strain of divorce, take extra time to make decisions, or insist on getting a second opinion before you buy anything.

### **What's the Best Use of This Professional's Services?**

Like many people going through a divorce, you may sometimes feel that you don't know where to turn. As personal and financial pressures mount, you could go to the wrong people for the wrong services. Trying to use your lawyer as a therapist or your banker as a tax consultant is an exercise in frustration. Think about your needs first and be sure you are using each professional's expertise appropriately.

Recognize the limits of each adviser you contact. Your local real estate agent, for example, may not be able to appraise the value of commercial property or of a vacation house located in a different city. If necessary, ask for referrals to specialists, and keep asking questions until you find the right person to answer them. You can save time and money by gathering much of the data the professional will need, especially financial information. Chapter 8 details the kind of information you'll need.

### **Am I Evaluating This Professional Objectively?**

It's fine to ask friends and associates for referrals, but do not assume that a professional referred by someone you trust is the right one for you or for your case. You will still want to ask questions to determine whether this person is knowledgeable, capable, and a good match for you personally.

Similarly, do not feel compelled to use your sister just because she is an attorney or your uncle just because he is an accountant. While these relatives may have your best interests in mind and be very trustworthy, they may miss creative solutions or the big picture because they are too close to your situation. Objectivity is important.

### **Selecting Professionals to Assist You**

Besides providing quality service, a good professional should explain potential risks in your situation and offer realistic appraisals of results and consequences. (Of course, the more risks the professional finds, the more money he or she stands to earn.) Keep that in mind as you review these descriptions of professionals who can help you during divorce. (For handy reference, you can enter names, addresses, and phone numbers of your professional advisers in Section G of the appendix.)

#### **Lawyers**

For assisting during a divorce, lawyers charge hourly rates. These fees vary widely across the country and locally, too, mostly based on the lawyer's experience level. Be sure to find one that fits your wallet. Be aware, too, that most lawyers require that you pay an up-front retainer before they do any work, sometimes amounting to thousands of dollars. As the lawyer spends time working for you, the bill is paid out of your retainer.

When the lawyer uses up the retainer, she'll either bill you directly or ask for another lump sum from which to draw. If you hire a lawyer who requests a retainer, be sure that you get monthly statements showing the precise work done, the amount billed, the amount deducted from your retainer, and the amount left. If there's a balance remaining at the end of the case (or if you change lawyers), you're entitled to get that money back.

Financial negotiations and lines of authority remain clearest when each party is represented by his or her own attorney. In some states the court can order a wealthier spouse to pay your lawyer fees, so if you really can't afford an attorney you can check into whether that's a possibility. You can also look into limited scope representation, described below.

### **Limited Scope Representation or “Unbundling”**

Hiring a lawyer to represent you in a divorce can be enormously expensive, way beyond the reach of some people. Many of those folks represent themselves in family court, and some would benefit greatly from having a little bit of help from a lawyer even if they can't afford full representation. Because of this, a number of states have now authorized attorneys to provide limited legal services to their clients—a practice that has been frowned upon in the past. This is called limited scope representation or “unbundled” legal services.

With limited scope representation, instead of an attorney representing you in all aspects of your case, you and the attorney can agree that you will perform some of the work in your case and the lawyer will do some. Examples of how you can use unbundled legal services are:

1. Consulting a lawyer for legal information and advice about your case when you are representing yourself and come upon something you don't understand, or to help you with the more complicated parts of your case (such as discovery and legal research) while you do the simpler tasks yourself.
2. Hiring a lawyer to represent you on certain issues in your case (such as child custody, child and/or spousal support, dividing property) while you do the rest yourself.
3. Hiring a lawyer to prepare forms and court documents, which you then file yourself and follow up by appearing in court. You might also hire a lawyer to make a court appearance for you instead.

4. Hiring a lawyer to coach you on how to represent yourself at court hearings, or to instruct you on how best to present evidence in court.

The cost of limited scope representation varies. Attorneys generally charge their regular or negotiated hourly rate for the hours they work. Whether you pay a retainer depends on the scope of services requested.



States have not developed uniform rules about the nature and extent of limited scope services that attorneys are allowed to offer—and some states don't allow it at all, so you'll have to find out how your state treats limited scope representation.

If you hire a lawyer to provide limited services, it is critical that you discuss in detail which tasks each of you will undertake. Be sure to ask questions about issues that are not clear to you. Your success depends on working together as a team.

Not all lawyers are comfortable offering limited scope representation, so you may have to look around to find someone who will work cooperatively with you.

## **Tips on Working With Your Lawyer**

Whether or not your lawyer is a specialist in divorce, you should expect any lawyer to:

- provide you with a clear understanding of how you will be billed and what costs to expect, including retainer, court costs, expert witness fees, and other expenses
- provide you with copies of all documents related to your case
- maintain detailed time records and send you accurate and understandable bills
- return your phone calls promptly
- explain your rights and how he or she will go about securing them for you
- keep you up to date on settlement negotiations, and
- put significant effort into trying to settle your case out of court and, if that is not possible, prepare your case—and you—for trial.

Remember, communication is a two-way street. Just as your attorney should provide you information, you must provide complete and honest information to your attorney. This includes filling out requested forms and

gathering requested documents. (This is covered in detail in Chapter 8.) If your attorney has incomplete or inaccurate information, the advice you receive may be inappropriate for your particular circumstances.

Do not be concerned if your attorney is friendly with the opposing counsel. In fact, this often works to your advantage. Even if the attorneys are friends, they will each work for their client's interest. Attorneys who cooperate with each other are better able to negotiate and settle out of court, which will result in lower legal fees. In addition, if the attorneys are enemies and drawn into an emotional fight, the end result will be higher fees and a lower quality of representation for you. An attorney in such a situation will not be able to focus clearly and objectively on the facts of your case.

Expect your lawyer to be pleasant but not to act as your *de facto* therapist. The lawyer's job is to guide you through the legal maze, not to listen to how your marriage might have turned out better if only you or your spouse had done this or that. If, as is often the case, you're suffering emotionally because of the breakup, you *should* see a therapist (see below). Therapists usually don't charge as much as lawyers, and they're much better equipped for dealing with emotions.

### What to Look for in a Lawyer

Choosing the right attorney is one of the most important decisions you will make. The right lawyer can help you achieve financial security as well as ease the strain of the divorce process. But the wrong lawyer can add to your woes and possibly cause you to lose your rightful assets and perhaps even custody of your children.

When selecting an attorney, make sure your schedules are compatible. If they're not, you will have difficulties together. Because your lawyer is working on more than one case at a time, he or she may not always be able to take your phone calls—but should return them promptly. You must also promptly return phone calls from your attorney and respond to any correspondence to keep your case moving along.

### What to Look for in a Lawyer (cont'd)

Take the time and make the effort to choose a lawyer who is strong and experienced, yet sensitive to your needs. You need to resist the urge to quickly choose a lawyer just because a friend or relative says “so-and-so is good.” Instead, interview at least three lawyers and compare them using the following criteria:

- **Knowledge and experience in family law.** An attorney who’s practiced five years or more and devotes all or most of his practice to matrimonial law would be ideal. In addition, ask how much courtroom experience the attorney has, how many contested custody cases the attorney has handled, and whether the attorney has given lectures or written articles on divorce (often a sign of in-depth knowledge). Does the attorney belong to the Academy of Matrimonial Lawyers, a professional group that certifies experts? In some states, such as California, consider hiring a certified family law specialist. These attorneys must pass an examination that tests their specific knowledge of divorce law. Most keep current on developments in divorce law by attending continuing legal education programs. They may know more about divorce law—including support, custody, and property division questions—than nonspecialists, and they may charge more as well.
- **Interest in your case.** Does the lawyer seem interested and excited, or bored and preoccupied? A divorce case tests any lawyer’s zest for facts and details. You want someone who seems energized and up to the challenge.
- **Availability of a team.** Does the attorney have the assistance of other lawyers and paralegals? Particularly in a complex case, the lawyer may need backup. You might ask how many others in the firm handle divorce cases and ask to meet with them as well. Similarly, because divorce cases often involve other fields of law—such as real estate, taxes, trusts, and the like—you should ask whether the firm has other attorney resources available for consultation if needed.

### What to Look for in a Lawyer (cont'd)

- **Coherent strategy.** All legal cases involve a plan of action that's based on goals on which the lawyer and client concur. After you explain your situation, ask the prospective attorney: What results can I reasonably expect? How will we achieve those results? How will we decide whether to try the case or settle? If we do try the case, how much will that cost?
- **Rapport.** Ask yourself: What's my gut feeling about this person? Charm is no substitute for competence. But you are going to be spending lots of time with your attorney, so you'll need a certain comfort level. Look for a lawyer who is pleasant but also confident and assertive.

In short, you want a lawyer who is going to solve problems, not create them. To get such an able advocate means you need to choose well, not necessarily quickly or cheaply. Take your time and be thorough. Make sure you understand the attorney's fees and billing practices, and have them set forth in a retainer agreement.

For further help finding a lawyer, see the appendix.

## Mediators

A private mediator is a neutral third person, trained in conflict resolution and family law, who works with both parties together to help them reach agreement on some or all of the issues involved in the divorce, including property division, child custody, and child and spousal support.

In some counties, mediators associated with the family courts work with divorcing couples on child-related issues only—they don't deal with support or property issues. In some places, this type of court-connected mediation is mandatory, even if you are also seeing a private mediator.

In mediation, you and your spouse are in control of the decisions about how to divide property and deal with alimony and child custody and support, rather than having a judge decide for you. The mediator won't give legal advice or advocate for either party's position as a lawyer does. Instead, the mediator—along with your lawyers, if you have them—can help you

explore different options and find a resolution that works for both of you. (For more about when mediation is appropriate, see “When to Use Private Mediation,” below.)

Mediators are often lawyers themselves; sometimes they are therapists, social workers, or clergypeople. You pay for mediation by the hour, and the rates will be what a lawyer, therapist, or social worker normally charges. If the mediator is an attorney with lots of experience in family law, you can expect to pay the same rate that you are paying your own lawyer. In fact, you could pay more—but keep in mind that mediation tends to be an efficient, cost-effective way to settle cases. Generally, the parties share the cost of mediation equally, unless they agree otherwise because one spouse has much greater resources.



To find a private mediator, ask friends and professional colleagues for referrals. The court clerk at your local family or domestic relations court may be able to give you some referrals. You can also contact the national Association for Conflict Resolution (ACR) for a list of mediators in your area. ACR's website, [www.acrnet.org](http://www.acrnet.org), lists mediators all over the country.

Used properly, mediation can be much less costly than a prolonged legal battle—whether or not you have a lawyer as well. Often, even couples who are mediating their divorce use consulting attorneys to help them consider their options and make proposals for settlement, and to draft or review the agreement that comes out of mediation. If you don't use a lawyer during your mediation, you may still need one to help you at the end. In some cases, the mediator will draw up a “memorandum of understanding” that outlines your agreement—then you can ask a lawyer to spend a short time looking over the agreement and putting it into the proper form to be submitted to the court and made into a final judgment.



## When to Use Private Mediation

As mediation becomes more and more common, most people going through a divorce will consider using the process. If you're not sure whether mediation is for you, consider some of the following questions:

- Do you and your spouse both want to resolve your divorce with the least conflict possible? If so, then mediation should be your first stop.
- Are both of you able to stand up for yourselves? If so, mediation can work. But if you are easily intimidated by your spouse and end up agreeing to things just so he or she won't be angry, then you might be better off with an attorney-advocate.
- Was the decision to divorce mutual, and are you both clear that reconciliation isn't an option? The less conflict there is about who left whom and whether the marriage is over, the more likely you'll be able to cooperate in mediation. If either one of you is still dealing with very intense feelings of anger or having difficulty just being in the room with the other person, it will be much more difficult. But even if the answer to this question isn't an unqualified yes, mediation can still work.
- Do you respect and support your spouse's relationship with your kids? If you have children, it's enormously important that you and your spouse be able to communicate effectively and make decisions together. Mediation is a great way to practice this with the help of a skilled professional.
- Is there a history of violence or emotional abuse by one spouse, or does either spouse abuse drugs or alcohol? In these circumstances, it's probably better for both parties to have attorneys advocating for them.
- Are you willing to share all financial information, and do you trust your spouse to do the same? To be successful, mediation requires full disclosure of financial information by both parties.

There may be other factors that seem important to you. The following is by Gary Friedman, author of *A Guide to Divorce Mediation: How to Reach a Fair, Legal Settlement at a Fraction of the Cost* (Workman Publishing):

"Central to determining mediation's appropriateness is whether or not the parties can deal fairly with one another.

### When to Use Private Mediation (cont'd)

Differences in the parties' openness to the process, the tendency of one party to dominate the other and inequalities in ability (or willingness) to deal with the subject matter must all be examined. Before jumping into mediation, ask yourself several questions:

- Are we both open to reaching a result that is fair to the other?
- Are we able to communicate clearly with each other? Can we each express ourselves and hear the other?
- Can we each identify what is important to us as a realistic and solid base for making choices? Can we each express that?
- Is either of us unwilling to seek outside support or unable to use it effectively when it is needed?

The decision whether or not to mediate should be an informed one, and one that can be reconsidered. Either party's hesitation should be taken seriously; both must be willing for the process to be meaningful. A decision not to mediate or to stop the mediation does not mean that adversary litigation is the sole choice. You can bring in a co-mediator, use a type of mediation more protective of the parties or work with lawyers committed to collaborating with their clients."

### Collaborative Divorce

If it doesn't seem like mediation is for you because you want the support of having a lawyer of your own, but you are committed to the peaceful resolution of your divorce, consider using a fairly new process called collaborative law.

In a collaborative process, each spouse is represented by an attorney who is committed to a fair resolution of all the issues in the divorce. To begin the process, both spouses and their attorneys sign an agreement that calls for the following:

1. Each spouse agrees to fully disclose and exchange all financial documents that will allow for fully informed financial decisions.
2. Both spouses and their attorneys agree to maintain absolute confidentiality during the process, creating a safe environment for spouses to freely express needs and concerns.

3. The spouses agree to reach a written agreement on all issues and not to seek a judge's intervention, and agree that the attorneys may use the written agreement to obtain a final court decree.
4. Both spouses and both attorneys agree that if either party ends the collaborative process before they've reached an agreement, their attorneys must withdraw from the case and can't represent their respective clients in a court fight. To go to court, the spouses must hire new lawyers.

Central to the collaborative law process is the commitment by everyone involved to resolving instead of litigating. While the attorneys represent their respective clients, they also support the collaborative process, require full disclosure of all assets and liabilities, and encourage agreements for both spouses and their children. The "no court" agreement is critical, as it provides a major incentive to settle without incurring the cost of starting over again with a new attorney.

During the process, the parties and their attorneys meet in a neutral setting to begin negotiations. All meetings include both spouses and both attorneys. All participants must contribute to positive discussions. At some point the spouses may agree to jointly retain experts, i.e., forensic accountants, to prepare accounting analyses, value assets, and assist with other technical issues. Other financial professionals may provide financial and tax advice, and in some cases the spouses may hire a child specialist, and even a mental health professional to provide ways to cope with the emotional stresses of divorce. What assistance is needed will vary from case to case.

### **Benefits of Collaborative Divorce**

- You receive support from your attorney's advocacy, expertise, problem-solving, and negotiating skills, while still retaining control over creating a negotiated agreement.
- You stay focused on finding positive solutions instead of getting derailed by threats of "going to court."
- You negotiate a comprehensive settlement, instead of receiving an order made by a judge with too little time to understand the issues important to you or the nuances of your case.

- You increase the likelihood of compliance with the terms of a negotiated agreement when each spouse had a stake in settlement. Working together cooperatively creates a positive environment for co-parenting children and can improve your relationship.



For more tips on divorce mediation, take a look at *Divorce Without Court: A Guide to Mediation & Collaborative Divorce*, by Katherine E. Stoner (Nolo).

## Arbitrators and Private Judges

Arbitrators differ from attorneys, who represent the interests of one spouse, and from mediators, who represent the interests of neither but act as neutral facilitators with no decision-making power. Instead, arbitrators and private judges (often retired from the bench) hear a case and make decisions regarding disputed issues, decisions that are then incorporated into a court judgment.

Arbitrators charge hourly or daily rates. Typically, these fees are somewhat more than what a top-paid attorney receives. However, arbitration is usually far less expensive than going to trial with an attorney, because fewer hours are involved.

Arbitration can be a better option than going to court. It can be most useful in resolving specific issues on which you cannot agree, such as what a business is worth. Each side presents its case, and the arbitrator decides. Arbitration is not about negotiation and, in fact, may come up as an option after all negotiating efforts have stalled. You may want to consider this relatively quick and effective way to reach a decision.



The best way to find an arbitrator is to ask your professional adviser—attorney, CPA, financial adviser, or insurance agent—for a referral. You can also contact the American Arbitration Association (AAA) for lists of arbitrators, at [www.adr.org](http://www.adr.org).

## Financial Planners

As attorneys begin to recognize how complex and critical financial planning is to the decisions their clients make during divorce, they are turning more

and more to financial planners to provide advice and recommendations to clients on dividing assets.

A financial planner can help you prepare for your financial future as a single person. A planner may be able to help you identify potential risks in your settlement agreement and the tax consequences of decisions you are contemplating. Planners can review your net worth and cash flow statements as well as your retirement benefits, investment portfolio, and business holdings.

There are three types of financial planners. Fee-only planners charge as much as several thousand dollars to develop a full financial plan addressing every aspect of your finances or offer consultations on your specific questions for a fee based on an hourly rate.

Commission-only planners derive all of their income from 3%–5% sales commissions on the investments they sell you. While they may give good advice, if they earn the majority of their income selling products, they may have a conflict of interest that can bias their recommendations.

Lastly, there are financial planners who are compensated by a combination of fee and commission, and who may also have a conflict of interest when they advise you to buy certain products.

To find a financial planner, ask for a referral from an accountant, banker, or attorney you trust. You can also contact the Financial Planning Association at 800-322-4237, or visit its website at [www.fpanet.org](http://www.fpanet.org).

To be certain you are dealing with a reputable professional, check references and credentials. Planners who have undergone a rigorous program offered through the College for Financial Planning in Denver earn the title of Certified Financial Planner (CFP). Chartered Financial Consultant (ChFC) is another credential to look for. It's given to financial planners who pass a series of courses at The American College, located in Bryn Mawr, Pennsylvania.

In hiring a financial planner, look for someone who can analyze the financial impact of divorce on you—not someone whose primary focus is on selling investments. You also want someone who can communicate with your attorney, because the financial implications of your divorce will no doubt have an impact on the legal consequences. Your planner should help you identify and assess risks so you can protect yourself. Few of us manage our finances as well as we could, but you will find it to your benefit if you choose a planner who is willing to tell you what you would rather not hear.

## How Financial Planners Can Help With Your Divorce

As you go through your divorce, a financial planner can help you:

- set long-term and short-term goals
- develop an action plan to reach those goals
- identify cash flow needs, sources of income, and expenses
- put yourself on a budget
- evaluate current investments in terms of risks and objectives
- determine which assets are most appropriate for you to keep
- develop an investment portfolio for your needs and goals
- learn the costs and tax consequences of keeping or not keeping your family home
- determine whether the proceeds from a retirement plan should be rolled over to an IRA or Roth IRA
- determine whether to take an immediate or a deferred distribution from a retirement plan
- evaluate whether your current insurance coverage is appropriate and cost-effective
- decide how to invest for education funding, and
- make estate planning decisions.

## Divorce Financial Analysts

A new breed of adviser is the “certified divorce financial analyst,” formerly called a “certified divorce planner.” Much like financial planners, these specialists help couples wade through the fiscal intricacies of splitting up. In fact, many of them have a financial title such as certified public accountant (CPA) or certified financial planner (CFP) in addition to their divorce financial analyst designation.

Divorce financial analysts generally charge between \$100 and \$200 per hour. They’re most effective working with couples on specific financial issues that are particularly complex, like dividing a stock portfolio or valuing and dividing a business. While they’re open to all clients, it’s usually higher-asset couples (with estates of at least \$250,000) who have been married

more than ten years—so that alimony is a major issue—who can make the best use of their services.

To find a divorce financial analyst, contact the Institute for Divorce Financial Analysts, the body that certifies these professionals, at 800-875-1760 or on the Web at [www.institutedfa.com](http://www.institutedfa.com).

## **Stockbrokers and Money Managers**

Stockbrokers tend to focus on individual stock, bond, mutual fund, and insurance transactions. Money managers look at the overall performance of an investment portfolio and evaluate how it meets short-term and long-term needs for growth, income, and safety.

In gathering information on your financial condition, you may have to contact your stockbroker for copies of brokerage accounts or other items. Again, as with other professionals who work on commission, recognize that your stockbroker may try to sell you products when you call for financial information.

Stockbrokers receive commissions on sales charges, which are paid by the client—usually 1% to 5% of the amount of money invested in stocks, bonds, mutual funds, or annuities. Money managers, on the other hand, receive a fee for the service they provide, which is designing and managing investment portfolios. They charge a percentage of the value of the money they manage—usually 1% to 1.5% on accounts of \$200,000 to \$1,000,000 and 1% to 3% on smaller accounts.

## **Accountants**

Accountants can provide a variety of services ranging from auditing a business to assessing employee benefits packages. Accountants charge by the hour or by the project. A certified public accountant (CPA) can work as a tax consultant—but don't assume that all CPAs can provide personal tax services. If you have income tax concerns, you may want to start by consulting an enrolled agent (EA), a tax specialist qualified to practice before the IRS. If you think your spouse is hiding assets or covering up financial facts, you may want to hire a forensic accountant. These specialists can trace marital property, evaluate financial reports, and value businesses.

To find out about enrolled agents, and to find one in your area, you can contact the National Association of Enrolled Agents at 800-424-4339 or [www.naea.org](http://www.naea.org).

## **Bankers**

Your bank and banker can prove quite useful in helping you with various financial issues of divorce, such as canceling or opening lines of credit, establishing new accounts, or getting loans. Do not expect a banker, however, to advise you on investments or other complex issues outside his or her realm of expertise. Also, while bankers work on salaries, they often function as salespeople for their own institutions, promote their own products, or sell mutual funds with a commission. Your banker may advise you to park your money in a certificate of deposit even though your long-term goals might be better served by investing in stocks or mutual funds. Get information from several different sources or consult with your financial planner before making any long-term decisions.

## **Insurance Agents**

Insurance is one way to protect yourself from risks, and during divorce it's important to review your coverage. Contact your insurance agent to double-check your policies for life, health, disability, property, and business. Also check the cash and surrender values of the policy—they may be different from the amount stated in your contract because the actual rate of interest paid may differ from the rate of interest assumed when the policy was originally bought. You might also be charged a fee if the policy is cashed in.

Divorce is a good time to check the cash value of any life insurance policies because this value represents marital property to be divided. In addition, the policy can provide emergency cash if necessary; but be aware that the surrender value may be lower than the cash value. When you divide the family cars, be sure to check your auto insurance to make sure you are paying only to insure yourself (and perhaps your driving-age children) on the car(s) you keep.

Insurance agents are paid commissions. The commissions are paid by the insurance company, but the company prices its policies to include the commission—so ultimately, the customer pays the commission.



If you do not have an insurance agent, shop around and talk to several to find one with whom you feel comfortable. Be aware that insurance agents hold sales positions and may ask you to buy a new policy or expand an old one when you call for information. Resist their pressures and be sure you absolutely need any new insurance you purchase.

## **Real Estate Agents**

When a real estate agent is involved in the sale of a home, that agent usually receives a commission from the seller, even if the agent has been working with the buyer. An agent who appraises a house usually will do so for free, in hopes of getting your business later when you sell.

Because your house may be the most valuable asset in your divorce settlement, it's important to get an accurate appraisal of its current market value. Try to get estimates from several real estate agents or from a certified appraiser so you can negotiate with your spouse or a third-party buyer from a knowledgeable position. The best agents to ask are those familiar with the neighborhood. If you used an agent when you bought the house, that person is often well suited to appraise the property now.

Certified appraisers are covered in Chapter 13. You can get referrals from real estate agents, escrow companies, and lending institutions.

## **Therapists**

In the stress of divorce, a therapist or counselor can be a valuable resource for helping resolve personal issues. To find someone, ask friends for referrals, or contact a local mental health association, church, or family service agency.

Therapists charge by the hour (the "50-minute" hour). Keep in mind, especially if money is tight, that your medical insurance may reimburse you for all or part of your therapy sessions.

As with any professional, it's important to check credentials, but also make sure the therapist's approach feels appropriate to you. Don't hire a Freudian who does long-term psychoanalysis if you want short-term counseling to help you get through the divorce process. If you can't afford one-on-one therapy, you may be able to find help and encouragement through a support group, a community service agency, or a program sponsored by a religious group.

## **Credit Counselors**

Credit advisers can help you negotiate with your creditors and set up systems to manage your finances. These agencies generally receive most of their funding from major creditors such as department stores, credit card companies, and banks.

Use the services of credit counselors who are affiliated with nonprofit organizations such as the United Way, a local “Y,” or a church- or synagogue-run association. A few other nonprofit credit counselors operate nationwide. The best are Myvesta, [www.myvesta.org](http://www.myvesta.org), 301-762-5270, and the National Foundation for Credit Counseling, [www.nfcc.org](http://www.nfcc.org), 800-388-2227. These nonprofit organizations generally charge nothing or a nominal fee for setting up a repayment plan.

To use a nonprofit credit adviser to help you pay your debts, you must either have some disposable income or be willing to sell some of your property. A credit adviser contacts your creditors to let them know that you’ve sought assistance and need more time to pay. Based on your income and debts, the adviser, with your creditors, decides on how much you pay. You then make one or two direct payments each month to the agency, which in turn pays your creditors. A credit adviser can often get wage garnishments revoked and interest and late charges dropped. These agencies also help people make monthly budgets.

## **Typing or Paralegal Services**

Typing and paralegal services cannot give legal advice or represent you on legal matters, but they can offer document preparation services at low cost. If you want help in preparing your divorce papers, these services may be able to help you. Typing and paralegal services charge per project (for typing forms) or, sometimes, per page.

In selecting a typing service, you must separate the good (honest and competent) from the bad (dishonest and/or incompetent). Good services will provide you with a written contract that describes the services they plan to provide, states the total price you will be charged, and explains their complaint procedure and refund policy.

Unlike attorneys, paralegals are neither state-licensed nor rated by their peers or professional associations.

Here are some things to look for when choosing a typing or paralegal service:

- **An established or recommended service.** Few services stay in business unless they provide honest and competent services. A recommendation from a social service agency, friend, or lawyer is probably a good bet.
- **Reasonable fees.** The fee should be based on the amount of work a task requires, the specialized nature of the task, and reasonable overhead. For example, if the task is straightforward and takes just 30 minutes of typing, the fee should reflect the rate charged by basic typing services with similar overhead—about \$10 a page or \$20 an hour.
- **Access to quality self-help publications.** Good typing services provide ready access to reliable self-help materials, either for free or at a reasonable price.
- **Trained staff.** One indication of whether or not people are committed to providing good service is whether or not they have undertaken skills training. Appropriate training is available through independent paralegal associations and continuing education seminars for financial planners.

## Actuaries

If a pension or retirement plan is at stake in your divorce, you may need the services of an actuary, a specialized financial professional. For details, including fees charged, see Chapter 14.

## Business Appraisers

To determine the financial value of any business—including a sole proprietorship or professional practice—a business appraiser conducts a detailed analysis.

Call the IRS and request a copy of Internal Revenue Rulings 59-60 and 83-120 if you or your spouse operates a business or is a professional—a doctor, lawyer, accountant, psychotherapist, and the like—with a private practice in the form of a closely held corporation. You will want to know the value of the business or practice. IRS 59-60 deals with methods of valuing closely held corporations; 83-120 concerns valuation of stock.

### **Are Fees Paid to Professionals Tax Deductible?**

You can deduct from your income taxes certain fees paid to professionals. Not many fees are deductible, but especially during divorce, every bit can help. Here are the rules:

- If you receive alimony, you can deduct all attorney fees you pay to secure or collect that alimony. If your spouse is paying your legal fees, the fees are not deductible. Nor are fees paid to lawyers by an alimony payer.
- All fees paid to any professional—including attorneys, accountants, financial planners, and stockbrokers—for advice on tax consequences arising from a divorce are deductible from your income taxes.

If you plan to deduct fees, your adviser must itemize your billing showing exactly how much you were charged for the advice regarding alimony collection or tax issues.

Be sure to ask your lawyer, financial planner, and/or accountant about tax-deductible fees to be certain you've covered them all.

### **Private Investigators**

Private investigators, or private detectives, can sometimes be helpful in a divorce by exposing fraud or locating missing funds or other assets. Contrary to the “gumshoe” image spawned by countless movies and TV shows, private detectives are much more likely to wield a database than a pistol. Computers allow them to obtain massive amounts of information from probate records, motor vehicle registrations, credit reports, association membership lists, and other sources.

There are no formal education requirements for most private detectives, but many have experience in the military, law enforcement, insurance, collections, or in the security industry. Most states require that private investigators be licensed, and a growing number of states specify training requirements. California, for example, requires 6,000 hours of investigative experience, a background check, and a qualifying score on a written exam, or 4,000 hours and a college or law degree.

A good investigator is curious, aggressive, persistent, assertive, and a good communicator. A skilled private detective is able to think on her feet and has strong interviewing or interrogation skills. Most bill their clients on an hourly basis and may ask for reimbursement of expenses.

## Online Do-It-Yourself Divorce Services

A growing number of websites seek to provide legal forms for divorce and offer varying degrees of help in completing them. For fees ranging from \$50 to \$300—a fraction of what most lawyers charge even for an uncontested divorce—these sites offer to help you prepare the paperwork and represent yourself in your divorce.

Much as over-the-counter remedies may help clear up minor health problems but can't replace a doctor when it comes to serious health concerns, these sites may be useful for the simplest of divorce procedures. But if the spouses disagree on any important issue and/or if they have children or complex finances, there's a substantial risk to relying on these sites alone, without consulting with a lawyer.

Online resources include commercial sites like [www.MyLawyer.com](http://www.MyLawyer.com) and [www.LegalZoom.com](http://www.LegalZoom.com), and government-sponsored sites, such as the California courts' self-help center, [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).



**More about online resources.** There's an entire chapter on how to find divorce information yourself in *Nolo's Essential Guide to Divorce*, by Emily Daskow (Nolo).



## Financial Fact-Finding: What Must I Know and When Must I Know It?

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|                                                     |     |
|-----------------------------------------------------|-----|
| Advice to the Terminally Disorganized .....         | 99  |
| If You Think Your Spouse May Be Hiding Assets ..... | 101 |
| Don't Forget the "Easy-to-Forget" Assets .....      | 102 |
| The W-2 and the Tax Return .....                    | 106 |
| What About the Gifts You Gave Me? .....             | 111 |
| Financial Facts Checklist .....                     | 112 |
| Questions to Ask an Attorney .....                  | 112 |

*Most often in marriage, one partner takes care of the paperwork and possibly the financial decision making. This is practical when you're still together, but a potential disaster during divorce.*

No one can make proper financial decisions without adequate information. How can you tell whether to keep the family home if you do not know what it costs to maintain it? On what will you base requests for alimony or child support if you are in the dark about living expenses? Both you and your spouse will need to document your financial life as you go through the divorce. Now, in the early stages, is the best time to start.

If you left the bookkeeping to your partner, you may feel as though you are starting from scratch. It's important not to panic. Take control by finding out as much as you can about the finances of your marriage. And realize that you will live through this part of your divorce.

Linda, a 35-year-old mother of two, recalled that when she first separated from her husband, she was petrified at the thought of confronting her financial life. As she kept at it, however, the job became easier. "Now I can look at all of these complicated papers and forms and not feel scared," she reported.



If you were the family bookkeeper, you will be in much better shape than your spouse who did not participate in managing the finances. You can move on to "Don't Forget the "Easy-to-Forget" Assets," below, and begin verifying the financial information you will need during your divorce. Otherwise, continue reading.

Whatever role you played previously, by the time the divorce is over, you will probably know more about the details of your financial life than you ever cared to. You gain this knowledge by going through these three steps:

- 1. Information gathering.** This is the step in which you find information and sort files, receipts, bill statements, and other papers.
- 2. Information analysis.** After sorting your papers, you'll want to review your files, appraisals, and valuations. It's also important to calculate taxes and other costs—either by yourself or with an accountant or financial advisor.

**3. Decision making.** Once you analyze what you own and owe and what it costs to live, you can begin to decide what to do with your property in the divorce.

Start investigating your financial position now. Do not wait until you are at the bargaining table for the final settlement to determine the worth of your house or the value of your spouse's retirement benefits. When you enter the negotiations, you want to have as much up-to-date information as you can.

In this beginning stage of the divorce process, focus on information-gathering only. Even if you do not understand all of it, do not get sidetracked from your financial fact-finding mission. Later on, you can concentrate on decision making. For now, your time is best spent on documenting your economic situation. Staying focused may seem hard, but it gets easier as you go along. Besides, it will help you:

- save time and money, especially once you hire an attorney
- distinguish your separate property from the marital assets
- negotiate a settlement from a position of strength, and
- begin building a foundation for a secure financial future.

## Advice to the Terminally Disorganized

Ideally, your books and accounts are up to date and in order. More likely, however, you will have to hunt for records and receipts. You are not alone. Few people are as on top of their personal finances as they would like to be—or pretend to be.

Fortunately, you have a number of options in finding what you need. Tax returns, for instance, are gold mines of information in a divorce. The *Financial Facts Checklist* at the end of this chapter will give you other clues for finding financial data. But before you get there, here are some ideas to get you started:

**Tax returns.** If you do not currently have your tax returns for the past three to five years, you can get copies from the IRS by using Form 4506. Contact the IRS at 800-829-3676 to request the form by mail or download it at [www.irs.gov](http://www.irs.gov). You should get copies of your returns within about 45 days of when you send the form in.



The IRS generally sends your tax information to the address shown on your previous return. If you've moved or are concerned about arousing your spouse's anger or suspicion, ask that the forms be sent to your office, your attorney, a friend, or a post office box. Once you have copies of the tax returns, you can review them with a trusted accountant or financial planner who can show you how to find basic financial information on the forms.

**Loan applications and account statements.** Check recent copies of credit or loan applications, canceled checks and bank, brokerage, and credit union statements for information on assets or debts.

**Insurance policies.** Look for the names of the beneficiaries on any insurance policies. Determine whether the insurance is term or whole life. If it is whole life, find out the cash value.

**Estate plans.** You may find a wealth of information about property you and your spouse own by reviewing wills, trusts, and other estate planning documents.

**Retirement plans.** Keep track of work-related pension or savings plans, both your own and your spouse's.

**Financial professionals.** Make a list of accountants, lawyers, and other financial advisers you or your spouse have been using.

**Credit reports.** You can get a copy of your credit report periodically from one of the major credit bureaus. (See Chapter 5.)

**Title reports.** Visit your county land records office and conduct a title search, or have an escrow company do one for you, if you suspect there might be liens against your home or other real estate. (See Chapter 13 for details on liens.)

If you know you'll have trouble staying organized once you begin getting your paperwork together, you can hire a local bookkeeping service. You might also consider the services of a professional organizer. Modern life has gotten so complicated that there is now a national association of professional organizers. Local groups may be listed in the phone book or classified advertisements in the newspaper. Before hiring a professional organizer, make sure the person listens to you and asks what you want, instead of telling you what you need.

No matter what approach you take in organizing your documents, keep it simple. You can buy an inexpensive three-ring binder to hold your various papers. As your stack of information grows, create categories of documents

by using the divider tabs that come with the binder. The *Net Worth* and *Cash Flow* statements in Chapter 12 will give you an idea of the kinds of divisions you can make.

When you begin to feel overwhelmed, remember that you are not just shuffling papers to get through your divorce. You are doing the groundwork for your financial decision making and security for many years to come. And that is worth the effort it takes to become informed and organized about your paperwork.

## If You Think Your Spouse May Be Hiding Assets

Unfortunately, divorce can be the occasion for a game of financial “cat and mouse” in which one spouse hides assets or makes other unethical moves. In some cases, the gaps in the financial information you get from your spouse occur because of honest mistakes. Many people are not detail-oriented when it comes to personal finances, and in the stress of divorce, may forget some specifics.

On the other hand, some spouses purposely conceal the value of a business or switch funds into secret accounts. If the judge finds out, the spouse who hides assets may be deemed guilty of “economic misconduct.” This misconduct is likely to affect the final settlement—the misbehaving spouse will probably get less than the innocent spouse.

### Winning Big?

One California woman learned the hard way how seriously judges take the duty to disclose assets to the other party. In 1996, Denise Rossi won a \$1.3-million lottery jackpot and 11 days later filed for divorce from her husband of 25 years. She kept her lottery winnings secret from her husband during the divorce proceedings. Two years later, he inadvertently learned of her windfall when he received a misdirected piece of mail. In 1999, a Superior Court judge ordered that the entire jackpot be given to the husband after determining that the wife violated state disclosure laws and acted out of malice or fraud. News reports indicate that the wife filed for bankruptcy in early 2000.

If you have any reason to believe your spouse is being less than candid with you about income or other assets, you will have to do a little detective work on your own.

If your own review of records like old income tax returns doesn't yield results, consider hiring a special type of certified public accountant called a forensic accountant. These specialists will comb through your records and can usually create an accurate picture of your spouse's financial position. Their services, however, can be expensive. You must weigh the cost of hiring a forensic accountant against the dollar amount at stake in your divorce.

The legal process of "discovery" can be used to force a reluctant spouse to turn over records and statements. Discovery is a formal information-gathering process used in lawsuits. Spouses (usually through lawyers) send papers to each other asking that questions be answered or documents turned over.

Another procedure used in discovery is taking depositions—that is, orally asking questions. Be warned, however, that discovery is usually time-consuming and costly, and may ultimately turn up nothing of importance. Therefore, gather information informally if possible.



No matter how you feel about your soon-to-be-ex-spouse, you may have a legal obligation to behave responsibly toward him or her as long as you remain married. For example, California law states that spouses have a fiduciary responsibility to each other. This obligation is similar to the kind of responsibility real estate agents have toward the people they represent in home sales or to that between the trustee of a trust fund and the beneficiary of the fund. This duty means that each spouse must handle the family finances in a "prudent" manner and must make all information available to the other.

## **Don't Forget the "Easy-to-Forget" Assets**

Many assets divided during the divorce are not difficult to account for: the house, cars, retirement plans, and stocks. For other assets, you may have to search a little if your spouse is trying to hide them, as discussed above. Still other assets are in plain view, but you may overlook them nevertheless.

While these “easy-to-forget” assets may not be worth a great deal of money, they can turn out to be valuable when you and your spouse are negotiating over who gets what in your divorce settlement. They could include such things as country club memberships, points for hotel, airline, or credit card programs, or equity in an auto lease.

Here are some other commonly overlooked assets and some suggestions for how to handle them.

**Stock options.** The right to purchase the employer’s stock at a bargain price some time in the future may have significant value. Usually, the spouse who owns the stock options keeps them in exchange for an asset the other spouse wants to keep. Alternatively, you can agree to exercise the option jointly in the future if the company’s buy-sell agreement permits this. (See Chapter 16 for more on stock options.)

**Tax refunds.** If you file a joint tax return, the tax refund check will be in both names. Your divorce agreement should clearly state how the refund will be split. (See Chapter 11.)

**Property taxes.** If property taxes are paid partly for the past and partly for the future, the spouse paying those taxes for a period in which both spouses used the house may be entitled to a reimbursement of half of the taxes paid during that period of joint use.

**Prepaid insurance.** Because all insurance is paid for in advance, including life, disability, and casualty insurance, consider these prepayments when you are valuing and dividing property.

**Vacation pay.** The value of accumulated vacation hours should be based on the spouse’s pay rate. If the employed spouse will be compensated now or later for unused sick pay, it may also be valued.

**Frequent flyer points.** To split these points, you can divide the miles themselves, have free tickets issued in the other spouse’s name, or determine the monetary value of the travel benefits and compensate the other spouse accordingly (see “Who Gets the Miles?” below).

**Season tickets.** For some couples, season tickets for a hot sports team or important cultural events can be practically priceless. Whether you have tickets for the 50-yard line or a box at the opera, be sure you know their financial value and whether they can be replaced or replicated. Otherwise, you could find yourself losing an asset you cherish—or fighting for something that’s not worth the effort.

## Searching for Hidden Assets

This checklist was adapted from one created by Ginita Wall, a CPA and Certified Financial Planner in San Diego, California. It includes common ways in which a spouse may undervalue or disguise marital assets. Be advised, however, that you may have difficulty finding some items or getting the proof you need to show they exist. As mentioned, a forensic accountant, formal discovery procedures, or both may help.

- Collusion with an employer to delay bonuses, stock options, or raises until after the divorce. You might find this information by taking the deposition of your spouse's boss or payroll supervisor, but more likely you'll need a forensic accountant.
- Salary paid to a nonexistent employee. The checks will be voided after divorce. Again, you might find this information by taking the deposition of your spouse's boss or payroll supervisor, but you'll probably need a forensic accountant.
- Money paid from the business to someone close—such as a father, mother, girlfriend, or boyfriend—for services that were in fact never rendered. The money will no doubt be given back to your spouse after the divorce is final.
- A custodial account set up in the name of a child, using the child's Social Security number.
- Delay in signing long-term business contracts until after the divorce. Although this may seem like smart planning, if the intent is to lower the value of the business, it is considered hiding assets.
- Skimming cash from a business.
- Antiques, artwork, hobby equipment, gun collections, and tools that are overlooked or undervalued. Look for lush furnishings, paintings, or collector-level carpets at the office, reflecting income that is unreported on tax returns and financial statements. Lifestyle costs will exceed income, so document any of the cash expenses you know your spouse has incurred.
- Debt repayment to a friend for a phony debt.
- Expenses paid for a girlfriend or boyfriend such as gifts, travel, rent, or tuition for college or special classes.
- Cash kept in the form of traveler's checks and money orders. You may be able to find these by tracing bank account deposits and withdrawals.

## Who Gets the Miles?

Many millions of Americans belong to frequent flyer programs. With the average active member logging 12,000 miles yearly, the number of banked miles is growing by 400 billion per year. In addition to the usual credits from airline flights, car rentals, and hotel stays, miles are offered for use with certain credit cards and other purchases.

Often one spouse accumulates most of the couple's frequent flyer miles through business travel, though they may be used for the couple's joint vacations. Thus, the miles may become an issue in divorce, with one spouse asserting that the other's accumulated miles should be split upon dissolution of the marriage.

Some divorce and estate lawyers place a value on air miles—two cents apiece—that approximates what the airlines charge when they sell miles to their corporate partners. Thus, 500,000 miles could be worth \$10,000.

But valuation can be more complicated than that. For example, one spouse may be a present or former airline employee who as a retiree will be entitled to fly free. How can that privilege be valued and divided? That would depend on the number of years until retirement, the average present cost of total flights, and the presumed inflation rate between now and retirement.

Further complicating the issue of frequent flyer miles is that some airlines do not permit division of this asset. If a significant number of frequent flyer points (more than 25,000) are at issue in your divorce, you or your attorney should review the airline's latest frequent flyer program statement. Be sure to specify in any agreement or court order the points being transferred and a deadline for the transfer before the expiration date of the points. Similar steps should be taken for other bonus plans, such as those sponsored by hotels, credit card issuers, banks, rental car companies, and department stores.

**Timeshares.** A resort timeshare is often worth less than the amount still owed on it. You must decide whether one of you will accept it at a lesser value or whether you will continue to own it jointly, sell it, or let it go into foreclosure.

**Professional dues and magazine subscriptions.** Discounts are frequently offered for two- and three-year memberships in professional associations or for subscriptions to academic journals or other magazines. A spouse preparing for divorce may make substantial prepayments using money from marital funds in order to avoid using separate funds in the future. The amounts spent may not be much, but every bit matters when you're dividing it all up.

## The W-2 and the Tax Return

Your financial fact-finding process should include an examination of your own and your spouse's W-2 forms, as well as your marital tax return or the returns you and your spouse file separately. There are several good reasons for doing this. First, it is never too soon to educate yourself on your finances, and the W-2 and the tax return are two primary tools. In addition, these documents provide information about how much income is available for alimony and child support payments (see Chapter 18). Finally, if you think it's possible your spouse might be concealing assets, the information contained there may point you toward sources you were not aware of.

Early every year, employers are required by law to issue a W-2 to each employee for the tax (calendar) year that has just ended. The employee attaches copies of the W-2 when filing his or her federal and state tax returns.



The W-2 form and the information included may change from year to year. For comprehensive information and instructions on the W-2 form, go to the IRS website [www.irs.gov](http://www.irs.gov) and, under "Forms and Publications," type in "W-2."

Of the numbered boxes on the W-2, the most important for this discussion are:

- **Box 1: Wages, tips, other compensation.** This is where the total of straight wages earned during the year appears. Also included are some employee business-expense reimbursements, moving-expense reimbursements, and employer contributions to certain fringe benefits, such as stock option compensation (for more on stock options, see Chapter 16). However, Box 1 does not include wages that the employee has deferred under certain employer-sponsored retirement plans, such as contributions to a 401(k) plan or a simple IRA (see Chapter 14).
- **Box 5: Medicare wages and tips.** This is usually a larger number than Social Security wages. Medicare wages are gross wages and are not reduced by contributions to salary deferral and other tax-deferred employee benefit plans. Generally, all income reported in Box 5 is considered gross wages, and is the amount used in calculating child and spousal support.
- **Box 11: Nonqualified plans.** Money that the taxpayer has received from certain retirement plans and certain deferred-compensation plans appears here.

|                                               |                            |                                                               |                            |                                                                                                                                                                                    |                  |
|-----------------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| a Control number                              |                            | OMB No. 1545-0008                                             |                            | Safe, accurate, FAST! Use  Visit the IRS Web Site at <a href="http://www.irs.gov">www.irs.gov</a> |                  |
| b Employer identification number              |                            | 1 Wages, tips, other compensation                             |                            | 2 Federal income tax withheld                                                                                                                                                      |                  |
| c Employer's name, address, and ZIP code      |                            | 3 Social security wages                                       |                            | 4 Social security tax withheld                                                                                                                                                     |                  |
|                                               |                            | 5 Medicare wages and tips                                     |                            | 6 Medicare tax withheld                                                                                                                                                            |                  |
|                                               |                            | 7 Social security tips                                        |                            | 8 Allocated tips                                                                                                                                                                   |                  |
| d Employee's social security number           |                            | 9 Advance EIC payment                                         |                            | 10 Dependent care benefits                                                                                                                                                         |                  |
| e Employee's first name and initial Last name |                            | 11 Nonqualified plans                                         |                            | 12a See instructions for box 12                                                                                                                                                    |                  |
|                                               |                            | 13 Statutory employee Retirement plan Early distribution only |                            | 12b                                                                                                                                                                                |                  |
|                                               |                            | 14 Other                                                      |                            | 12c                                                                                                                                                                                |                  |
|                                               |                            |                                                               |                            | 12d                                                                                                                                                                                |                  |
| f Employee's address and ZIP code             |                            |                                                               |                            |                                                                                                                                                                                    |                  |
| 15 State Employer's state ID number           | 16 State wages, tips, etc. | 17 State income tax                                           | 18 Local wages, tips, etc. | 19 Local income tax                                                                                                                                                                | 20 Locality name |
|                                               |                            |                                                               |                            |                                                                                                                                                                                    |                  |

**Form W-2 Wage and Tax Statement** **2002** Department of the Treasury - Internal Revenue Service  
 Copy B To Be Filed with Employee's FEDERAL Tax Return. (Rev. February 2002)  
 This information is being furnished to the Internal Revenue Service.



As for income tax returns, the format of the forms varies. Sources of funds may be marital income or separate income, and a joint return may reflect marital property, separate property, or both.

There are several items on a tax return and its supplementary schedules that are especially important:

- **Schedule A: Itemized Deductions.** This schedule may include several types of deductions that can figure into the earning-power equation for support. When you read the schedules filed by you and your spouse, look for entries that reveal items such as:

**Medical and dental expenses.** A taxpayer may claim a deduction only for expenses that exceed 7.5% of adjusted gross income. If there is a large number here, it may indicate that medical expenses will be an important part of a supported spouse's needs or that a supporting spouse may be unable to pay.

**Real estate taxes.** An entry here indicates home ownership or investment property. Holdings you didn't know about may be reflected here.

**Home mortgage interest.** An entry here suggests a family residence or possibly a vacation home. If home mortgage interest is being paid, request a copy of the note. Whether the note is for fixed or variable interest could affect support calculations. Also check whether the property has been refinanced.

- **Schedule B: Interest and Ordinary Dividends.** The entries on this schedule reflect interest from banks, money market accounts, brokerage accounts, and the like, as well as dividends paid by corporations to stockholders. These amounts are generally considered income, and thus they are available for child and spousal support. On this schedule, you'll see entries for:

**Interest earned.** This indicates the size of the current balance of invested funds. Thus, this may be helpful in assessing disclosure statements in other aspects of the divorce process. Whether the interest is taxable or tax-free will affect the support calculation.

**Dividends.** These are funds paid by securities. An entry here indicates that one or both spouses hold corporate stock or other securities. But many securities do not pay dividends, and those that don't may not be reflected on the tax return.

- **Schedule C: Profit or Loss From Business.** Unless you can come to an agreement between yourselves, the job of placing a dollar value on a business owned by the spouses at divorce is best done by a forensic accountant or a business appraiser. But the annual tax return can reveal clues about the earning power of a sole proprietorship or a sole practice.

You won't necessarily get easy, clear information from a business tax return. As recent scandals involving Fortune 500 companies have shown, business accounting can be an inexact science, with much room for fudging. A businessperson can manipulate figures by delaying the deposit of checks; overstating travel, meals, and entertainment ostensibly related to business; putting nonworking friends or relatives on the payroll to inflate "expenses"; buying personal items with business money; or writing off automobile expenses. If you suspect such practices, you may wish to hire a forensic accountant to do a detailed cash flow analysis and to value the business.

If you decide to wade into the world of business accounting, there are a few things you need to know. Businesses use different accounting methods. Some operate on a *cash basis*: They report to the IRS only cash income received, not money that their customers owe them, and they deduct expenses actually paid during the year. Others work on an *accrual basis*: They report income when it is earned, not necessarily received, and they deduct expenses when incurred, not necessarily when paid. Understanding the type of accounting method is essential to determining a business's profit or loss and, thus, its cash flow for purposes of support.

- **Schedule D: Capital Gains and Losses.** On this schedule, the taxpayer notes the sale or exchange of a capital asset, which is an asset owned and used personally or kept as an investment. Almost everything you own, including your house, household furnishings, car, jewelry, and personal collections, is a capital asset. If an item is a capital asset, its sale generates a capital gain. If you exercise a stock option, that's also capital gains income. (For more on capital gains and losses, see Chapter 11 and Chapter 13. For stock options, see Chapter 16.)

Many capital gains don't count as income for support purposes. The determining factor may be whether the gain is considered a one-time gain or a recurring gain. For example, if the periodic sale of chunks of land from a large parcel has been funding the lifestyle of the parties and there's a reasonable expectation that this pattern will continue, the sale proceeds may be considered income. In such a case, the tax effect of the capital gains portion of income may have a significant impact on the after-tax amounts available to both the supporting and the supported spouse.

Most state courts have said that income realized from the exercise of stock options is income available for child support. One Ohio court specifically held that the value of unexercised stock options (their increase in value from the date they were granted to the date they could have been exercised) is gross income for child support purposes.

- **Schedule E: Real Estate, Royalties, Partnerships, Trusts.** In Schedule E, the taxpayer lists income derived from the sources mentioned. Depending on what's listed, the items here may be the source of significant cash flow that may be used in calculating support. In particular, this schedule may show:

**Rental revenue.** Rental property could be a significant source of cash flow. Think about more than just the monthly rent when evaluating this figure for cash flow purposes. For example, if rental property is leased to a business owned by one or both of the spouses, does it rent at market rates? When was it acquired, and how much is owed on it? Was it ever refinanced? If a taxpayer is paying debt service, there will be less cash available for support.

**S corporation and partnership income.** S corporations and partnerships do not pay federal income tax. All taxable income, whether distributed or not, must be reported individually by the shareholders and partners based on their ownership percentage and is reflected on what's called a K-1 form. If an S corporation or a partnership is involved, get a copy of the corporate or partnership income tax return, together with a K-1, to understand significant details about what constitutes income and assets.

- **Form 1099-MISC.** This lists miscellaneous income, such as payments made to nonemployees (for example, consultants or independent contractors) and interest and dividend income reinvested but not actually received. If the income is for services rendered, you may find it on the Schedule C form.

### How Long Should You Keep Tax Returns?

The short answer: Forever.

As the only official record of your earnings history, the tax return may be your most important financial document, period. It is crucial not only in a divorce but also for other financial purposes, such as setting your level of Social Security benefits.

Some advisers suggest you keep all tax returns for three years. That's just plain bad advice. Our strong recommendation: *Never* throw them away.

### What About the Gifts You Gave Me?

It's sad but true that some of the most heated arguments during a divorce center on gifts—whether the gifts are an art collection and silverware, or the bread machine and Tupperware. Determining how to attribute financial gifts from family members, such as money used toward the down payment on the house or to buy a car, can cause a great deal of friction during the divorce.

As a general rule, property acquired by gift or inheritance is the separate property of the spouse who receives it. But it may not always be the case. For instance, in a situation involving one of our clients, a husband transferred real estate holdings to his wife to protect himself against creditors. At divorce, she claimed the property was a gift and her husband had no interest in it. She was dismayed when the transfer was deemed a transfer to defraud creditors. The transfer was voided, and the property was subject to the claims of her husband's creditors.

## Financial Facts Checklist

The following list contains most of the items you will want to gather, whether you are doing your divorce yourself or working with an attorney or other legal or financial professionals. We recommend getting this information together yourself—you'll save time and money and gain a sense of control over your divorce.

Most of this information should be in your files at home or your office, or possibly in a safe-deposit box. If you don't have a clue about where to find a particular item, watch the mail as it arrives. You may be able to glean the names of insurance companies, banks, brokerage houses, and other institutions, which you can contact to get information. Your insurance agent should be able to answer questions on policies, and the personnel or benefits office of your (or your spouse's) employer can shed some light on retirement benefits. For information on real estate, contact the agent who sold you the house or the company that holds the mortgage.

### Instructions: Financial Facts Checklist

Put a check (✓) in the blanks next to items you have. Enter a zero for items that neither you nor your spouse has—and when you find them, enter a check mark within the zero. For documents you don't have, make a note about which of you will be responsible for getting them. Some of the terms in the chart may be unfamiliar to you. Don't worry. You will understand them better as you continue reading. For now, use the list to jog your memory—or your accountant's—about what documents to look for.

## Questions to Ask an Attorney

1. Is there any hint that my spouse is hiding income? If so, how can we seek to expose that?
2. What documents do I need to prove our real income?
3. What liability do I have if I find our real income is greater than the income we reported on our tax returns?
4. Are there any other obvious sources of income on my spouse's tax return?

## Financial Facts Checklist

### Tax returns (past five years)

- ☐ U.S.:
- ☐ State:

### Pre- and/or postnuptial agreements

- ☐ husband
- ☐ wife

### Previous divorce documents, including property settlement and alimony and child support orders

- ☐ husband
- ☐ wife

### Wills

- ☐ husband
- ☐ wife

### Trust documents

- ☐ husband
- ☐ wife

### Pay stubs (from Jan. 1 of current year)

- ☐ husband
- ☐ wife

### Bank records

- |                                                                                                                                        |                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <b>savings accounts</b><br>in whose name:<br>account number:<br>balance:<br>latest statement<br>deposit slips | <input type="checkbox"/> <b>checking accounts</b><br>in whose name:<br>account number:<br>balance:<br>latest statement<br>cancelled checks<br>deposit slips |
| <input type="checkbox"/> <b>children's custodial accounts</b>                                                                          | <input type="checkbox"/> <b>certificates of deposit</b>                                                                                                     |

### Other accounts (including all accounts closed within past two years)

- |                                                                                                                   |                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <b>annuities</b><br>in whose name:<br>account number:<br>interest/dividends:<br>balance: | <input type="checkbox"/> <b>cash management accounts</b><br>in whose name:<br>account number:<br>interest/dividends:<br>balance: |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|

### Financial Facts Checklist (cont'd)

☐ **brokerage accounts**

in whose name:  
account number:  
interest/dividends:  
balance:

☐ **credit card account**

in whose name:  
account number:  
balance:

☐ **credit card account**

in whose name:  
account number:  
balance:

☐ **commodities accounts**

in whose name:  
account number:  
interest/dividends:  
balance:

☐ **credit union accounts**

in whose name:  
account number:  
interest/dividends:  
balance:

☐ **credit card account**

in whose name:  
account number:  
balance:

in whose name:  
account number:  
balance:

☐ **mutual funds**

in whose name:  
account number:  
interest/dividends:  
balance:

#### Tax-free Investments

in whose name:  
account number:  
interest/dividends:  
balance:

#### Insurance policies (either spouse)

☐ life

☐ homeowners' or renters'

☐ liability

☐ health

☐ parents

☐ children

☐ motor vehicles

☐ personal umbrella

☐ disability

#### Employee/group Insurance benefits (either spouse)

☐ medical

☐ disability

☐ life

#### Other employee benefits

☐ auto allowances

☐ sick pay

☐ expense account

☐ stock options

### Financial Facts Checklist (cont'd)

- |                                                  |                                                                   |
|--------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> <b>travel benefits</b>  | <input type="checkbox"/> <b>salary bonuses</b>                    |
| <input type="checkbox"/> frequent flyer miles    | <input type="checkbox"/> <b>deferred compensation</b>             |
| <input type="checkbox"/> rental car bonus points | <input type="checkbox"/> <b>military/VA benefits</b>              |
| <input type="checkbox"/> hotel bonus points      | <input type="checkbox"/> <b>workers' compensation claim/award</b> |
| <input type="checkbox"/> <b>severance pay</b>    | <input type="checkbox"/> <b>vacation pay</b>                      |

#### Retirement plans

- |                                                                 |                                                         |
|-----------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> money purchase plans                   | <input type="checkbox"/> 401(k) plans                   |
| <input type="checkbox"/> ESOPs (Employee Stock Ownership Plans) | <input type="checkbox"/> TSAs (Tax-Sheltered Annuities) |
| <input type="checkbox"/> Keoghs                                 | <input type="checkbox"/> profit-sharing                 |
| <input type="checkbox"/> thrift plans                           | <input type="checkbox"/> defined benefit plans          |
| <input type="checkbox"/> IRAs or SEP-IRAs                       | <input type="checkbox"/> Roth IRA                       |
| <input type="checkbox"/> SIMPLEs                                |                                                         |

#### Financial statements

- ☐ net worth—balance sheet or assets/liabilities statements
- ☐ cash flow or income/expense statement
- ☐ statements or documents regarding collections—gold, coins, stamps, etc.
- ☐ inheritances (include copy of will or other verification of amount received)
- ☐ gifts received
- ☐ anticipated inheritances/gifts
- ☐ personal injury awards
- ☐ litigation claims
- ☐ prior court judgments
- ☐ loan applications
- ☐ personal loans payable
- ☐ personal loans receivable
- ☐ **debts**
  - ☐ list of outstanding debts on date of separation
    - ☐ husband
    - ☐ wife
    - ☐ joint
- ☐ ticket/subscription rights to sports/cultural events
- ☐ memberships in country clubs, fraternal orders, social/charitable groups

#### Real estate records

- |                                                      |                                                    |
|------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> current value of home(s)    | <input type="checkbox"/> original mortgage(s)      |
| <input type="checkbox"/> original purchase price     | <input type="checkbox"/> last monthly statement    |
| <input type="checkbox"/> property tax statements     | <input type="checkbox"/> escrow closing statements |
| <input type="checkbox"/> deeds                       | <input type="checkbox"/> appraisals                |
| <input type="checkbox"/> bills for home improvements |                                                    |



## Financial Facts Checklist (cont'd)

### Safe-deposit box

- |                                              |                                                              |
|----------------------------------------------|--------------------------------------------------------------|
| <input type="checkbox"/> location/number/key | <input type="checkbox"/> inventory and/or copies of contents |
|----------------------------------------------|--------------------------------------------------------------|

### Documents identifying other property, such as:

- |                                    |                                             |
|------------------------------------|---------------------------------------------|
| <input type="checkbox"/> patents   | <input type="checkbox"/> copyrights         |
| <input type="checkbox"/> royalties | <input type="checkbox"/> license agreements |

### Miscellaneous personal property, such as:

- |                                               |                                     |
|-----------------------------------------------|-------------------------------------|
| <input type="checkbox"/> boat                 | <input type="checkbox"/> airplane   |
| <input type="checkbox"/> camper               | <input type="checkbox"/> motorcycle |
| <input type="checkbox"/> other motor vehicles | <input type="checkbox"/> jewelry    |
| <input type="checkbox"/> furs                 | <input type="checkbox"/> other      |

### Information on businesses

- |                                                                                                    |                                                                               |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <input type="checkbox"/> filing papers                                                             | <input type="checkbox"/> current list of owners                               |
| <input type="checkbox"/> percentage of ownership                                                   | <input type="checkbox"/> officer/director positions held by spouse/self       |
| <input type="checkbox"/> tax returns                                                               | <input type="checkbox"/> retirement plan documents                            |
| <input type="checkbox"/> bank statements                                                           | <input type="checkbox"/> loan applications                                    |
| <input type="checkbox"/> financial statements (last five years)                                    | <input type="checkbox"/> business agreements<br>(partnership, buy-sell, etc.) |
| <input type="checkbox"/> credit card records                                                       | <input type="checkbox"/> appointment diaries                                  |
| <input type="checkbox"/> documents on business-owned real estate (deeds, appraisals, leases, etc.) |                                                                               |
| <input type="checkbox"/> accounts payable/receivable                                               |                                                                               |

### ☐ Household furnishings (attach itemized list)

### Miscellaneous personal documents

- ☐ passport
- ☐ power of attorney
- ☐ resume (for self and spouse)
- ☐ appointment diaries
- ☐ bills for living expenses (child care, phone, electric, Internet access, cleaning, yard work, laundry, etc.)
- ☐ check stubs for other payments, such as disability income, unemployment compensation, or Social Security benefits

### Any other document that will help establish

- |                                    |                                  |
|------------------------------------|----------------------------------|
| <input type="checkbox"/> net worth | <input type="checkbox"/> income  |
| <input type="checkbox"/> husband   | <input type="checkbox"/> husband |
| <input type="checkbox"/> wife      | <input type="checkbox"/> wife    |
| <input type="checkbox"/> joint     | <input type="checkbox"/> joint   |



## Facing the Future: What Must I Plan For?

---

|                                         |     |
|-----------------------------------------|-----|
| Major Upcoming Life Events .....        | 118 |
| Anticipated Financial Commitments ..... | 119 |
| Major Goals That Will Cost Money .....  | 119 |
| Where Does the Money Come From? .....   | 123 |

*If you're thinking about a divorce or beginning one, the last place you may want to look is to the future. At this stage, you might see only problems ahead. Nevertheless, you need to begin changing your outlook from "we" to "me"—from being part of a couple to being on your own.*

It's helpful at an early stage to set basic goals for yourself. In most goal-setting exercises, you're asked to think about where you'd like to be in a few years—an effective approach for some people. In counseling divorcing clients, however, we've found it helpful to turn the question around. If you have trouble looking at the future, answer this:

*Where **don't** you want to be five years from now?*

Speaking financially, few of us want to be in debt, burdened with property we can't sell, or working two jobs just to survive. Yet that could happen to you if you drift through a divorce without planning ahead. By thinking about the kinds of financial problems you'd like to avoid, you can narrow your focus and clear the way for what you *do* want to accomplish.

As an initial planning exercise, use the columns in the chart that follows to jot down the immediate problems and goals you foresee. (Use the examples to give you ideas about your own needs.)

Once you have a basic idea of where you'd like to go in the future, take a few moments to reexamine where you are now. Use these questions to help you think about your own situation.

## Major Upcoming Life Events

These events affect what you will and will *not* be able to do with money. For instance, if your teenagers are beginning college in a year, you may need a smaller house and a larger paycheck. You may be completing your own education and need to budget time and money for a career change or job search. Perhaps you're reaching retirement age and must prepare for living on a reduced income. Whatever your situation, it's better to anticipate major events and prepare for them financially, than to get caught off guard when it's time to take care of a major expense.

## Anticipated Financial Commitments

To whom are you committed, and for how long? Have you agreed to support aging parents or another family member? Is that an indefinite agreement, or does it last for a specific number of years? Will you need to have money available for a business investment? Do you have an upcoming balloon payment? Again, the answers to questions such as these determine what's possible for your financial future.

Think about what's happening in your life and make a list of major upcoming life events and anticipated financial commitments. By getting this information down on paper, you will not only clarify your financial needs but may also reduce your fears about the future. (Again, use the examples to get you started.) This exercise will serve as a guide as you make financial decisions in your divorce.

Finally, review the lists you've just made and mark your top three priorities in order from one to three. These are the next major issues that will demand your attention and time. We recommend tackling only three items at a time, because while you are working on them your financial condition is likely to change, and you may have new priorities. You can repeat this exercise any time you feel stuck about deciding what to do next in your divorce.

## Major Goals That Will Cost Money

We all have goals, such as to lose weight, be popular, and exercise more. Here, we're listing important life goals that may affect your finances—and vice versa. So think about what's important for you to accomplish and will cost money. This might involve getting more education, improving your business or your employability, or fulfilling an aspiration that's key to your happiness and well-being.

List those goals and estimate their corresponding costs.

### Where I Do/Don't Want to Be in the Future

#### ***In the Next Six Months:***

#### ***Financial Problems to Avoid***

##### **Examples:**

Letting bills become overdue  
 Paying only interest due on credit cards  
 Using credit cards for all purchases  
 Not tracking expenses

##### **Your Problems to Avoid:**

#### ***Financial Goals to Meet***

##### **Examples:**

Pay off credit cards, or at least reduce balances by 50%  
 Create a monthly budget calendar to avoid overdue bills  
 Save 5% of income each month in emergency reserve  
 Start monthly investing into XYZ mutual fund

##### **Your Goals:**

#### ***In the Next Year:***

#### ***Financial Problems to Avoid***

##### **Examples:**

Not enough money to pay mortgage  
 Being late on mortgage  
 No medical insurance  
 Borrowing from friends or Mom

##### **Your Problems to Avoid:**

#### ***Financial Goals to Meet***

##### **Examples:**

Sell house and prepare to buy my own—set aside \$20,000 toward down payment  
 Obtain disability insurance policy

##### **Your Goals:**

| What's Happening in My Life                                                                                                                                                                                                           |                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| Major Upcoming Life Events                                                                                                                                                                                                            | Anticipated Financial Commitments                                                                                                                   |
| <p><b>Examples:</b></p> <p>Daughter beginning college in two years</p> <p>Move to new home in three years</p> <p>Job change in spring because of recent layoffs</p> <p>Son's wedding next June</p> <p><b>Events in Your Life:</b></p> | <p><b>Examples:</b></p> <p>Pay for Dad's health care</p> <p>New car—\$300/month</p> <p>Remodel kitchen—\$15,000</p> <p><b>Your Commitments:</b></p> |

| Major Goals That Will Cost Money                                                                                                                          |                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Major Goal                                                                                                                                                | Expected Price Tag                                             |
| <b>Educational:</b><br><i>Example:</i> Earn M.B.A. degree<br><i>Example:</i> Earn certificate in computer programming<br><i>Your Educational Goals:</i>   | <br>\$20,000 over two years<br>\$3,500 over six months<br><br> |
| <b>Job:</b><br><i>Example:</i> Acquire contractor's license<br><i>Example:</i> Expand catering business by getting second truck<br><i>Your Job Goals:</i> | <br>\$2,000<br>\$18,000<br><br>                                |
| <b>Other:</b><br><i>Example:</i> Get certified as scuba diver<br><i>Example:</i> Go on African safari<br><i>Your Job Goals:</i>                           | <br>\$1,000<br>\$5,000<br><br>                                 |

## Where Does the Money Come From?

You've taken a look at what you absolutely *must do* and what you'd *like to do* next in your life. But how are you going to pay for it? Where will the money come from? And what are the consequences of how you bring money in to your household?

### During Your Separation, Be Aware of Where Your Money Comes From

While separated, you can get money in the same ways you did while married. Funds are available to you through:

- a job (salary) or business (income)
- borrowing/credit
- selling property or assets
- your spouse—in the form of temporary alimony, or
- your spouse's payments of marital debts.

But in this time period—between today and the final settlement—you are in a unique situation. You are setting the stage for the settlement, and you do not want to make financial decisions that could work against you. You must be sure to keep detailed, accurate records.

For instance, a woman who had never worked during her marriage got a low-paying job in a retail store and left her children in the care of her parents when her husband filed for divorce. In the final settlement, she received no alimony because she was already working to support herself—even though she wanted to go back to school to get training for a better job. Had she borrowed money to live on instead of getting the retail job, she might have been able to make a strong case for alimony.

In another case, the husband dutifully paid the household bills and temporary alimony for the two years that elapsed between the separation and the final settlement. Problems arose, however, because he had made the payments based on an informal arrangement with his spouse and had not documented this arrangement in a court order or in a written agreement. In his final settlement, he received no tax deduction for the alimony he paid out.

As these cases illustrate, you must not only figure out where the money is going and coming from, but also the consequences of your decisions about it.



**If you borrow or use credit cards.** Under normal circumstances, financial planners would not recommend that you go into debt. During divorce, however, you may need to borrow money simply to survive. If you must use credit cards, try to find those with the lowest interest rate possible. If you borrow from family or friends, ask whether they will let you start repaying them when you're back on your feet.

It's crucial for you to document any money spent to support yourself and your children. If you paid for "common necessities of life"—food, shelter, clothing, or medical care—you may be able to obtain a reimbursement for half of the costs. (See Chapter 5.)

**If you sell property or assets.** Before selling any jointly owned property without your spouse's knowledge or consent, ask your attorney whether you are legally permitted to do so. You will not be able to sell real estate, motor vehicles, or other assets with title documents that need both spouses' signatures. If you do sell any joint assets, be sure to set aside half of the proceeds for your spouse, or keep clear records of the money you received so that your spouse gets similarly valued property in the settlement.

**If you need temporary alimony.** If you need help paying the bills while the divorce is pending, you can request that your spouse pay temporary alimony. If your spouse is unwilling to do so voluntarily, you will need to request a hearing to have the issue resolved by a judge.

The judge looks at the needs of the party making the request—particularly that spouse's ability to support himself or herself—and the other spouse's ability to pay the temporary alimony. In a few counties, court officials have issued guidelines for judges to use in setting alimony. (For more information on alimony, see Chapter 18.)

If you will be *paying* alimony, be sure to get your agreement either ordered by a court or in writing. If you don't, you cannot deduct the payments from your income tax. If you will be *receiving* alimony pursuant to a court order or written agreement, you must report that alimony as income on your tax return. (See Chapter 11.)

### **Enforcing—and Making Permanent— Temporary Support Agreements**

If your temporary alimony agreement is in writing, but has not been ordered by the court, you may want to take that extra step to obtain a court order. Without a court order, you probably won't be able to enforce the agreement if your spouse doesn't pay.

As explained in Chapter 11, getting a court order is not difficult. If you and your spouse agree to the amount of temporary alimony, you can put your agreement into writing as a "stipulation." You—or your attorney—can then take a few simple steps to get that stipulation turned into a court order. It involves asking the judge to sign the stipulation. You should not have to appear in court.



## Protecting Against Risks to Life, Health, and Property

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|                                                          |     |
|----------------------------------------------------------|-----|
| Insurance .....                                          | 128 |
| Health Insurance .....                                   | 128 |
| Life Insurance .....                                     | 131 |
| Disability Insurance.....                                | 133 |
| Business Continuation Coverage.....                      | 134 |
| Property and Estate Protection.....                      | 134 |
| Title Documents .....                                    | 134 |
| Wills, Trusts, and Other Estate Planning Documents ..... | 135 |
| Questions to Ask Your Attorney .....                     | 136 |

*If you had no choice but to drive through a snowstorm on a curvy road, you would no doubt put chains on the tires and check the antifreeze. In navigating through your divorce, you must also take precautions if you are to survive financially.*

Use this chapter to “check the antifreeze”—that is, to make sure you are doing what you can to reduce risks and protect yourself and your property.

## Insurance

Insurance is designed to protect you from financial disaster. But when you divorce, your coverage itself may be at risk. Because policies can make for boring reading, and almost no one thinks about this subject until it's too late, insurance needs are commonly forgotten during divorce.

To demonstrate the importance of insurance in your life, ask yourself:

*If I were in an accident or suddenly became ill, how would I pay my medical expenses?*

Of course, being aware of what can happen without insurance and doing something about your situation are two different things. Begin to take action by reviewing the steps below, then follow up on these items.

## Health Insurance

Find copies of the policy under which you are currently covered. Check with your insurance agent to be certain that you and/or your children are still covered according to the policy terms. Find out how long your current policy will remain in effect and what the costs will be for the next six months to one year.

If you are covered under a group policy, you may need to speak to the personnel office or a special agent who handles the company's health care. If your family is covered by your spouse's insurance, you will be able to keep your coverage for 36 months after the divorce. (See “Keeping Health Care Coverage Through Your Spouse's Employer Under COBRA,” below.)

Parents with custody can get health insurance for their children through the *noncustodial* parent's employment-related insurance program (or other

group insurance plan), according to a federal law adopted as part of the Omnibus Reconciliation Act of 1993. The child cannot be denied coverage by the noncustodial parent, that parent's employer, or that parent's insurance company for any of the following reasons:

- the child does not live with the noncustodial parent
- the child is not claimed as a dependent on the noncustodial parent's federal income tax return, or
- the child lives outside of the plan's service area.

One challenge that the parent with custody may face is the noncustodial parent's reluctance to turn over money received for reimbursed medical claims. To avoid this problem, the custodial parent can obtain a Qualified Medical Child Support Order, known as a QMCSO.

The QMCSO is a court order that provides for health coverage for the child of the noncustodial parent under that parent's group health plan. When this court order is implemented, it forces the employer of the noncustodial parent to enroll the child in the group plan. Further, the QMCSO requires that the insurance company reimburse the custodial parent directly for health care expenses incurred by the custodial parent for the child's benefit. This requirement guarantees that custodial parents actually receive reimbursement for out-of-pocket contributions for a child's health care expenses. (For more on QMCSOs, see Chapter 18.)

## **Keeping Health Care Coverage Through Your Spouse's Employer Under COBRA**

If your health insurance is provided through a plan offered by your spouse's employer, and 20 or more people work for that employer, you can continue the health care coverage for a period of time after the divorce. Under the federal COBRA (Consolidated Omnibus Budget Reform Act) law, divorced spouses of employed medical plan participants can pay for their own coverage for up to 36 months after the divorce is final. Under the law, the premiums you're charged for the COBRA coverage may not exceed 102% of what the employer pays to cover you. But you should check the costs of other health plans before deciding to get COBRA coverage through your spouse's employer. (For more information, contact your local office of the federal Department of Labor and ask for a copy of the booklet entitled *Continuing Health Care Coverage* or check the department's website, [www.dol.gov](http://www.dol.gov).)

Your spouse's employer must inform you of your right to continue the coverage when your divorce becomes final. Don't leave it to your ex-spouse to notify the employer of that date. You should contact your ex-spouse's employer (probably the human resources department) and request the continued health care coverage as soon as your divorce is final.

Remember, the maximum length of time you can continue the coverage is 36 months. If you are healthy, start looking into individual coverage immediately. It may cost less than the continued group coverage. (Ask whether the provider of your continued coverage offers conversion to individual coverage. Be aware that such plans are usually expensive and limited in benefits.) Also, if you get a new job that provides group health insurance or if you remarry and your new spouse's employer offers group coverage, your continued coverage will usually be terminated.

Keep in mind that if you don't obtain new insurance before the end of the 36-month COBRA period, you risk becoming uninsurable if you fall ill.

Even if your ex-spouse's employer has fewer than 20 employees, state law may require it to provide COBRA-type benefits. For more information, contact your state Department of Labor, the personnel office at your spouse's job, or talk to your attorney or financial adviser.

## Life Insurance

When you divorce, you need to reconsider who should be named the beneficiary of any life insurance policies. Often, divorcing people forget to change the beneficiary. Then, years later, when one spouse dies, the *ex*-spouse could get all the benefits—even if there is a second spouse or if the deceased spouse wanted someone else, such as a child, to be the beneficiary.

In some divorce settlement agreements, the spouses may name the beneficiaries of their life insurance policies. In certain cases, the judge might make a similar order. If your settlement agreement or divorce decree says who the beneficiary will be, but you forget to change the policy, the beneficiaries named in the agreement or decree may be protected when you die. But they may also end up in a messy fight with the insurance company or your former spouse's heirs. Don't rely on the settlement agreement or divorce decree to name the beneficiary.

At the same time, don't automatically remove your spouse from your policy when you separate. You may be prohibited from doing so until after your divorce is final. Also, to provide for your children's support and college education, you may want to either establish a trust or keep your soon-to-be-ex-spouse as the beneficiary of your policy. This way, your spouse will receive a lump sum of cash to rear your minor children if you die before they reach adulthood.



For more on trusts, see [\*Make Your Own Living Trust\*](#), by Denis Clifford (Nolo).

If you are paying alimony, your ex-spouse may insist on being the beneficiary of a life insurance policy. That will keep your ex-spouse from losing the stream of income you provide if you die prematurely.

Sometimes, one spouse may want to name the children as beneficiaries rather than have any money go to the children's other parent. Think carefully before you make such a move. If the children are under 18 when you die, the probate court that oversees the distribution of your assets will require that a guardian be appointed to manage the insurance proceeds—usually in a bank account—until the children reach 18. If the guardian wants to remove money from the account, called a blocked or suspended account, the guardian will need court approval—an expensive, time-consuming, and

cumbersome procedure. And even when the money is distributed to the children at age 18, keep in mind that young adults are rarely mature enough to handle large amounts of money.

If you are receiving alimony and/or child support, don't overlook the importance of maintaining life insurance on your spouse so that your income stream is protected. Keep existing life insurance in force or add a new policy on the life of the person paying support. The person paying alimony can deduct insurance premiums if the person receiving the alimony is the owner of the policy (meaning they have the right to control or change the policy or the beneficiaries). (See Chapter 18 for more on alimony.)

### **Look After Your Life Insurance**

Would you want your soon-to-be-ex-spouse to benefit from your life insurance? When you divorce, you both must make sure that the disposition of any life insurance policies you own is clearly specified in your agreements. These questions can help you clarify what needs to be done with these policies:

- Who will own the policy if it is transferred?
- To whom may it be transferred?
- Are there any restrictions or conditions of transfer?
- Will the original owner get the policy back at some future time (for example, upon remarriage, termination of spousal/child support, or death of the person to whom the policy was transferred)?
- Are there any outstanding policy loans? If yes, who will pay this loan?
- Will the policy owner have the right to designate beneficiaries? If yes, are there any restrictions on who is named a beneficiary? Must the policy owner designate a beneficiary (that is, an irrevocable beneficiary)?
- If so, does the restriction end upon a remarriage, termination of spousal support, or a death?
- If the beneficiary is a child, does this designation end when the child support obligation ends?
- If a policy matures during the lifetime of the insured person (as can happen with an annuity or an endowment policy), who will receive the maturity proceeds?



### Look After Your Life Insurance (cont'd)

- What other policy rights will be affected by ownership or beneficiary restrictions? (These rights might include cash surrender, policy loans, or dividends.)
- Who will pay the premiums, and for how long?
- What happens if premiums are not paid? (While negotiating your settlement, you may want to require the payer spouse to provide evidence of payment to the other spouse at least ten days before the end of the policy's grace period.)
- Does a policy provision state what will happen if a premium is not paid—for example, that it will be paid via an automatic premium loan, paid-up insurance premiums, or extended term insurance?

If your settlement agreement or judgment makes changes to the life insurance policy, you must notify the insurance company and complete the necessary forms. Ideally, your agreement should give the spouse who will keep the policy until a certain date to complete the forms; if that spouse does not comply, the agreement should permit the court to complete the forms on that spouse's behalf.

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## Disability Insurance

Another risk to your income is that you—or the ex-spouse who is paying support—may become disabled. If you're dependent on alimony and/or child support, you may want to consider obtaining disability insurance on your paying spouse. Talk to the benefits department at your spouse's company to see whether disability insurance is available. Or contact your insurance agent to determine the cost of getting your own coverage for disability.

Especially if you're a single parent, you may hesitate to buy disability insurance due to the expense and your perceived lack of need. Consider the harsh reality your children would face, however, if you became disabled and unable to work.

## **Business Continuation Coverage**

Do you or your spouse own your own business? Check to see if you have insurance referred to as “key man” coverage. This coverage is designed so that the business can cover its operational costs in the event of the death of the business owner or another “key” person.

## **Property and Estate Protection**

While the ultimate fate of your property may be unknown at the moment, you should nevertheless protect your interests by double-checking title documents and reviewing your will, trusts, and other documents that dispose of your property at death.

### **Title Documents**

In order to divide assets and negotiate your divorce settlement, you must know how title (history of ownership) to those assets is legally recorded, regardless of whether that property is ultimately considered your separate property or part of the marital assets. Real estate title documents (deeds) are located at the county records office, usually called the county recorder. If you can't find the deeds at the recorder's office, a title company can help you. The recorder may have a website where you can order a copy of a recorded document (expect to pay a fee). You can also ask a real estate agent for a “property profile” that shows how title is held (usually free), or ask your mortgage company for loan documents, including any recorded deeds.

You should take a look at all recorded deeds to make sure your spouse has not unilaterally removed your name from property held jointly. In most states, either spouse can change title held in joint tenancy into tenancy in common, and you want to be sure your spouse hasn't done this without your consent.

### **Joint Tenancy and Tenancy in Common**

Joint tenancy property is owned with each joint tenant having a “right of survivorship.” This means that if either joint tenant dies, the other owner automatically inherits the deceased’s portion, even if a will or other document states otherwise. To sell joint tenancy property, all owners must agree, or the owner who wants to sell must change title from joint tenancy to a different form of ownership, called tenancy in common, and then sell his share. Tenancy in common does not have the right of survivorship. Either owner can leave—or sell—that owner’s share. (For more on joint tenancy property, see Chapter 6.)

Title documents for other types of property—for example, car registration forms and bank account and investment statements—are located in different places. To protect yourself from having your spouse unilaterally change title, you should write to the Department of Motor Vehicles, bank, or stockbroker to ask that no title changes take place until the divorce is settled.

### **Wills, Trusts, and Other Estate Planning Documents**

If you’ve made a will or living trust or taken other measures to determine what will happen to your property after your death, your divorce most likely alters those plans dramatically.

In many states, a final divorce judgment automatically revokes part or all of your will. It’s common for divorce to cancel all parts of your will that leave property to your ex-spouse; in some states, the entire will is wiped out. In any case, you should make a new will.

If you die before your divorce is final, your spouse may be entitled to a share or all of your property—even if your will leaves everything to other beneficiaries. To be certain about the distribution of your property, you can consult a Nolo estate planning publication (see resource list at the end of this chapter) or an attorney.



Take steps to ensure that your property is distributed according to your wishes. If you don't have a will and haven't arranged to transfer your property by other means (for example, joint tenancy or a living trust), your property will be distributed at your death according to state law. Usually this means your spouse and children will get your property. If you're divorced and have no children, your property will probably go to your parents, siblings, and siblings' children. If that's not what you want, make sure you take the time to make a new will.

### Planning for Your Children

If you have children, it's especially important to have an estate plan. At the least, consider:

- who will physically care for your children if you can't
- how they will be supported if you're not around, and
- who will manage the property you leave them if they are under 18.

In your will, you can name someone to be the personal guardian of your children and have physical custody. And you can name the same person, or someone else, to manage the property your children inherit from you. As for figuring out how to support the children after your death, you may want to consider term life insurance, which provides a preset amount of money if you die while the policy is in force. It's a relatively cheap way to provide quick cash for beneficiaries.

### Questions to Ask Your Attorney

1. Can I change the beneficiary of my life insurance from my spouse to my children during the divorce? How and when can I do that?
2. Can the divorce settlement include a provision for life insurance on the person who provides support to protect the support order or alimony?
3. As additional alimony, can the settlement include a provision for health insurance? Disability insurance?

## Nolo's Estate Planning Tools



Nolo publishes several books and software products on wills, living trusts, and avoiding probate:

- *Quicken WillMaker Plus* is interactive software that helps you make a sophisticated will. For example, with *WillMaker* you can choose among three ways to provide property management for children should you die before they are competent to handle property themselves. In addition, *WillMaker* allows you to express your last wishes for your funeral and burial and contains a living trust, a health care directive (living will), and durable power of attorney for finances valid in your state.
- *Plan Your Estate*, by Denis Clifford and Cora Jordan, is a comprehensive estate planning book, covering everything from basic estate planning (wills and living trusts) to sophisticated tax-saving strategies (AB trusts and much more).
- *Nolo's Simple Will Book*, by Denis Clifford, provides step-by-step instructions and forms to create a detailed will. Its will is similar in scope and sophistication to *WillMaker's*. The book comes with a disk, which you can use with any standard word processing program to make drafting and printing out the will easy.
- *8 Ways to Avoid Probate*, by Mary Randolph, explains important and frequently overlooked ways to avoid probate, an often lengthy process of certifying a will. It is now possible to avoid probate for many kinds of property without creating a living trust. If you suspect you should be paying attention to probate avoidance, but dread thinking about it, start with this small, but thorough, book.
- *Make Your Own Living Trust*, by Denis Clifford, explains in plain English how to create a trust yourself, without hiring a lawyer. It contains all the forms you need to create your own living trust with step-by-step instructions for filling them out.



## Taxes: How Do I File and Pay?

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|                                                              |     |
|--------------------------------------------------------------|-----|
| Get a Rough Estimate of Your Tax Bill .....                  | 140 |
| What Status Can Be Used When Filing Tax Returns?.....        | 141 |
| When in Doubt, File Separately .....                         | 143 |
| What to Know If You File Jointly .....                       | 147 |
| Your Responsibility When Signing a Joint Return .....        | 149 |
| What If Your Spouse Refuses to Sign a Joint Return? .....    | 149 |
| Other Concerns When Filing a Joint or Separate Return .....  | 149 |
| Dividing the Joint Tax Liability—Or the Refund .....         | 150 |
| Tax Issues Involving Temporary Alimony or Child Support..... | 153 |
| Get Your Tax Agreement in Writing.....                       | 154 |
| Questions to Ask Your Tax Adviser .....                      | 154 |

*When you're divorcing, you can't wait until just before April 15 to think about your taxes.*

**W**hile you do not have to confront every small detail in your tax papers when you're in the midst of a separation, you can take basic precautions that will save you money and prevent hassles later.

For instance, suppose you assume that you and your divorcing spouse will file income taxes jointly. At tax time, however, you discover your spouse has already filed separately. How will you pay the IRS for taxes you did not expect to owe? Better to grapple with the filing question now than to make costly assumptions.

The following guidelines will help you address the income tax questions that are most important at this stage of your divorce. As you move through the rest of the divorce process (and this book), you will face more complicated tax issues regarding your property. For now, stick to the basics.

## **Get a Rough Estimate of Your Tax Bill**

You don't want any nasty surprises next April 15. To avoid problems, make a rough calculation of your federal and state taxes. Ask your accountant or tax preparer to help you if need be. Figure out the amount you would pay if you filed separately and the amount you would pay if you filed with your spouse. Even if you haven't done all the paperwork necessary to find the exact amount, it's useful to get a tax estimate. The estimate will at least give you a guide for deciding how to file. You'll also be able to use the information if you eventually need to convince your spouse to file jointly.

If possible, discuss the decision on tax filing with your spouse, lawyer, accountant, or tax adviser. Your goal is to reach an agreement about filing and then document that agreement in writing.

**If you don't have access to tax information.** Often, one spouse does most of the bookkeeping for a family. If your spouse played that role and does not want to give you the information, you may have to get a court order or use legal discovery (evidence gathering) techniques. For either, you'll probably need the help of an attorney. Consult the appendix for resources. Before obtaining legal help, however, be sure to point out to your spouse that withholding information will only increase both of your legal bills.

You can contact your accountant for copies of previous returns, or ask the Internal Revenue Service for Form 4506. By completing the form and returning it to the IRS, you should be able to get the tax returns you need—as long as you signed the return when it was filed. The easiest way to get forms from the IRS is to visit the website at [www.irs.gov](http://www.irs.gov). From this address, you can link to state tax forms, tax tables, and publications. Also, you can search for divorce-related tax topics by a word search.

The IRS has several publications that can help you if you're going through divorce with an uncooperative spouse. The most important are:

- Publication 17, *Your Federal Income Tax for Individuals*
- Publication 501, *Exemptions, Standard Deduction, and Filing Information*
- Publication 504, *Divorced or Separated Individuals*
- Publication 505, *Tax Withholding and Estimated Tax*
- Publication 552, *Recordkeeping for Individuals*, and
- Publication 555, *Community Property*. If you live in the community property states of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin, many federal tax rules are applied differently than in the other states, which are called equitable distribution states.

If you have to wait for copies of previous years' returns and financial information, you can work with a tax accountant to estimate the amount you will owe the IRS. You can find out about deductions in several ways. Banks and lenders can tell you how much interest has been paid on a mortgage, and charities can give you the dollar amount you or your spouse donated. Call your spouse's employer to verify salary information and check copies of any loan applications you have. In Chapter 12, you will prepare *Net Worth* and *Cash Flow* statements, which can also help clarify your tax situation.

## What Status Can Be Used When Filing Tax Returns?

One of the most important decisions you will need to make is whether to file a joint return with your spouse or to file separately. The table below summarizes the types of filing status available to you and the requirements for each.



| <b><i>Filing Status</i></b>      | <b><i>Requirements</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Married filing jointly</b>    | You must be married up to and including last day of tax year (December 31) even if you are living apart.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Married filing separately</b> | You must be married up to and including last day of tax year                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Head of household</b>         | <p>If you are single:</p> <ul style="list-style-type: none"> <li>• you must provide more than half of the costs of maintaining your household, and</li> <li>• your household must be the principal home of at least one dependent.</li> </ul> <p>If you are married and have lived physically apart since before July 1 of the tax year:</p> <ul style="list-style-type: none"> <li>• you must file a separate return</li> <li>• you must maintain your home and have your child, stepchild, or other dependent living there for more than half the tax year (temporary absences such as vacations, time in school, and time when a child is absent under a custody agreement do not count as time spent away)</li> <li>• you must be able to claim the child as a dependent or release that claim (provide your spouse with a waiver—see Form 8332), and</li> <li>• you must furnish more than half the cost of maintaining the household during the tax year. (In figuring that cost, include clothing, education, medical treatment, mortgage principal payments, vacations, life insurance, transportation, and the value of services performed in the household by the taxpayer. Exclude property taxes, mortgage interest, rent, repairs, utilities, home insurance, and food eaten in the home.)</li> </ul> |
| <b>Single</b>                    | You must be unmarried, legally separated, or have your marriage annulled as of the last day of tax year and be ineligible for head of household status.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

## When in Doubt, File Separately

If you and your spouse are unable to agree on how to handle your taxes, file separately. Generally, you can amend two separate returns (yours and your spouse's) to file jointly if you change your minds. You cannot, however, amend a joint return after the due date for that return in order to file separately. If you initially file separately, you have only three years to amend your returns and file jointly. Although filing separately may actually cost more in dollars, it could save you a great deal of grief.

You will, of course, want to file separately if it will save on taxes—but you should also file this way if your spouse misrepresents income or expenses. If you file jointly, you could be liable for back taxes, interest, and penalties on a joint return. By filing separately, you will lessen your risk and keep your options open. Bear in mind that if you file separately you forfeit the right to certain deductions. These include education credits, child or dependent care expenses in most instances, the earned income credit, and interest paid on student loans.

Except in community property states, if you file a separate return, you generally report only your own income, exemptions, credits, and deductions. If your spouse had no income, you can claim an exemption for your spouse. If your spouse refuses to provide the information necessary to file a joint return, you should file a separate return.

### **Special Rules for Single Filers Living in a Community Property State**

As explained in detail in Chapter 12, married couples in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin live under community property laws. (Alaska gives married couples the option of identifying property held in trust as community property.)

Although these states' community property laws generally all operate in the same way, there are differences among the states. One significant variation is how they treat income from separate property. Arizona, California, Nevada, New Mexico, and Washington treat it as separate income. Idaho, Louisiana, Texas, and Wisconsin consider it community income even though it comes from separate property. (See "Questions to Ask Your Tax Adviser" at the end of this chapter.)

Broadly, these rules provide that income earned and assets acquired during marriage are owned 50-50, regardless of which spouse actually brought home the paycheck. Before filing a separate tax return in a community property state, check with a tax adviser. You will probably have to report half of the combined community income and be permitted to take half of the joint deductions, in addition to reporting your separate income and claiming your deductions. As straightforward as this sounds, it's not always clear whether a deduction (expense) is community or separate. It basically depends on whose money was used to pay it and the character of the debt. If you paid an expense out of community funds, you must divide it equally and report half of it on each spouse's return.

Community property laws also affect exemptions for dependents. When community income supports a dependent child, the exemption may be claimed by either spouse, but it cannot be divided. If you have two or more dependent children, you can divide the exemptions (each claiming a child), but you cannot divide any single exemption in half. If you both try to take the exemption, the IRS will assume that each of you provided exactly half of the support and won't permit either of you to claim the exemption.

### **Avoiding Liability for Your Spouse's Dishonesty With the IRS**

The IRS Restructuring and Reform Act of 1998 provides relief from joint liability when a spouse incorrectly reports items on a jointly filed tax return. The three kinds of relief and the factors influencing them are shown below. Innocent Spouse Relief is for all joint filers. It relieves you of all or a portion of the responsibility for paying tax, interest, and penalties if your spouse did something wrong on your joint tax return. The Separate Liability Election permits you to limit your liability for any deficiency to the amount that would be allocated to you if you had filed a separate return. Rules for Equitable Relief give the IRS discretion to relieve you of liability when you cannot qualify for relief under the rules for Innocent Spouse Relief or the Separate Liability Election.

There are two additional forms of relief for spouses in community property states. If one spouse fails to inform the other of community property income, the IRS can force that spouse to pay 100% of the tax due on the income that was kept secret. Also, if a couple has lived separately for an entire calendar year and each spouse has filed a separate return, the community income would be taxed to the person who earns it.

If you believe you may qualify for relief, go to the IRS website, [www.irs.gov](http://www.irs.gov). The material there includes a section called "Spousal Tax Relief Eligibility Explorer." From the IRS home page, under the "Individuals" heading, click on "Tax Information for Innocent Spouses." The site will guide you through the qualifying factors one question at a time and, if you appear to qualify for the relief, will download the appropriate application forms. Before filling out the forms, however, consult your tax adviser.

### Avoiding Liability for Your Spouse's Dishonesty With the IRS (cont'd)

| Factors                     | Rules for Innocent Spouse Relief                                                                                                                      | Rules for Separate Liability Election                                                                                                                                          | Rules for Equitable Relief                                                                                                                                                                                                                                            |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Type of liability</b>    | You must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse                                          | You must have filed a joint return that has an understatement of tax due, in part, to an erroneous item of your spouse                                                         | You must have filed a joint return that has either an understatement or underpayment of tax                                                                                                                                                                           |
| <b>Marital Status</b>       | No requirements.                                                                                                                                      | You must be no longer married, be legally separated, or have not lived with your spouse in the same house for an entire year before you file for relief.                       | IRS considers whether you are legally or physically separated or divorced.                                                                                                                                                                                            |
| <b>Knowledge</b>            | You must establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax. | If the IRS establishes that you actually knew of the item giving rise to the understatement, then you are not entitled to make the election to the extent of actual knowledge. | Intent to commit fraud. You must not have transferred property for the purpose of avoiding tax.                                                                                                                                                                       |
| <b>Other Qualifications</b> | Must file Form 8857 or similar statement within two years of the first date of collection activity.                                                   | Must file Form 8857 or similar statement within two years of the first date of collection activity.                                                                            | Must file Form 8857 or similar statement within two years of the first date of collection activity.                                                                                                                                                                   |
| <b>Unfairness</b>           | You must be able to show that it would be unfair, based on the facts and circumstances, to hold you liable for the understatement.                    | Not applicable.                                                                                                                                                                | The IRS must determine that it would be unfair to hold you liable for the underpayment or understatement of tax taking into account all the facts and circumstances.                                                                                                  |
| <b>Refunds</b>              | Yes, your request can generate a refund.                                                                                                              | No, your request cannot generate a refund.                                                                                                                                     | Yes, for amounts paid from your own funds between July 22, 1998, and April 15, 1999, and for amounts paid pursuant to an installment agreement after the date the request for relief is made. No refunds where relief is available under separate liability election. |

### A Note on Tax Rates

Reduced tax rates have been the centerpieces of recent federal legislation, including the Tax Increase and Reconciliation Act of 2005, passed by Congress in 2006. But the recent law, like the ones that preceded it, is a patchwork of provisions that phase in and out.

That presents a problem for us in preparing this book, because some tax rate figures we provide could be obsolete by the time you read them. For example, the tax on long-term capital gains and dividends has been lowered to 15% for higher-bracket taxpayers, but those cuts are now scheduled to expire after 2010. Similarly, the 5% long-term capital gains/dividend rate remains in effect for lower-bracket taxpayers (10% or 15% ordinary income bracket), then drops to zero for 2008. These reduced rates are scheduled to revert to previous levels in 2011. Whether that will happen—or whether they'll be changed again—is anyone's guess.

So, in the interest of sanity and clarity, in our examples we have stuck with the 2003 brackets—generally, 35%, 33%, 28%, 25%, 15%, and 10%—as well as the 15% capital gains/dividends rates. The same planning principles still apply, and if the tax laws are changed again or if these rates are allowed to expire, you may need to adjust the examples to be helpful in relation to the new rates.

## What to Know If You File Jointly

Filing a joint return is often to your economic advantage. A married taxpayer can claim the child and dependent care credit and the earned income credit (for low-income taxpayers) only on a joint return. In addition, certain deductions—such as the dependency exemption for a spouse and the deduction for a spousal IRA contribution—can be taken only on a joint return.

In deciding whether to file a joint return, you will want to calculate—or talk to your tax adviser about—how each of these factors will affect your tax bill:

- your tax rate
- any deductions or credits you may lose
- tax losses from partnerships or business losses
- tax benefits available by filing a joint return as compared to filing separately, and
- your liability for your spouse's dishonesty in reporting income and taking deductions when you file a joint return. (See below.)

### **Liability on Joint Tax Returns**

If you file a joint return, each spouse is liable for 100% of the taxes due on the return as well as any penalties and interest assessed on that return. Unless you qualify as an "innocent spouse" (see "Avoiding Liability for Your Spouse's Dishonesty With the IRS," above), you are generally liable for any unpaid taxes, even after your divorce is final. (In some cases, if you sign a joint return under duress or your spouse forges your name, the IRS will not consider you jointly liable.)

If you believe your spouse is not being honest in reporting income or claiming deductions and credits, file a separate return—even if it is to your economic disadvantage. If it turns out that your spouse was being honest in his reporting, you can always amend your returns and file jointly within three years of the original due dates. You cannot, however, amend a joint return and file separate returns.

The federal government increasingly gets involved in collecting past due child support and alimony payments. If the IRS withheld a tax refund on your joint return because your spouse has fallen behind in child support or alimony payments, you may qualify as an "injured" spouse and be able to recover your share of that refund. There's an easy process for doing this. Simply go to the IRS website, [www.irs.gov](http://www.irs.gov), download and complete Form 8379, and return it to the IRS.

Additional factors to consider include your responsibility when signing a joint return and liabilities you could incur if your spouse signs your name to a return or refuses to sign the return.

## **Your Responsibility When Signing a Joint Return**

According to the IRS, you may not ignore the information on any income tax return you sign. Legally, you must examine the return and make certain that any transaction of which you are aware is properly reported.

## **What If Your Spouse Refuses to Sign a Joint Return?**

If a spouse refuses to file a joint return and instead files separately, the other spouse must also file a separate return.

The spouse can file a joint return using only his/her name if the other spouse:

- refuses to file a joint return
- doesn't file a separate one
- had no income or earnings, and
- always filed a joint return in the past.

This works only if it is clear that the couple intended to file a joint return. If the refusing spouse won't sign because he or she feels the prepared return is fraudulent, the other spouse cannot file a joint return without the refusing spouse's signature.

## **Other Concerns When Filing a Joint or Separate Return**

You may have several other concerns regarding your spouse and the IRS, such as:

## **What If Your Spouse Settles a Tax Bill With the IRS?**

Suppose one spouse makes an agreement (called an offer in compromise) to pay the IRS less than the actual taxes due, plus interest and penalties, on a jointly filed return. That does not prevent the IRS from collecting money from the other spouse for the balance due. If the ex-spouse who is not covered in the settlement remarries, that person's new spouse also could be subject to unforeseen tax liabilities.

For instance, in one case, a widow had reached a settlement with the IRS to take care of the significant tax liabilities that were attributable to her deceased husband. When she remarried, she had not finished paying the amount mandated by the settlement. She also transferred property she



received from her first husband's estate to her new husband. The IRS sought to collect the balance of the settlement from the second husband, who tried to argue that he should not be responsible for the payments because he did not participate in the original agreement. The court found, however, that because the property had been transferred to him, he was effectively a party to the agreement and therefore had to pay up. (Although this example involved a widow, the same principle would apply had she been divorced and transferred her divorce settlement property to her new husband.)

### **Will an Indemnity Clause in a Divorce Agreement Protect You From the IRS?**

An indemnity clause is a section in a marital settlement or separation agreement in which one spouse agrees to pay the tax liability and to hold the other spouse harmless—in other words, ensure that the other spouse doesn't have to pay. This clause, however, isn't binding on the IRS. Except in unusual circumstances, the IRS can grab a joint taxpayer's property even after it has been divided in divorce to satisfy a joint tax debt.

### **What If Your Marriage Is Annulled?**

If your marriage is legally annulled, the IRS takes the position that it never existed. If you filed joint tax returns during your marriage, you will have to file corrected returns (as a single person) for the prior three years. You must do this even if you had no separate income to declare.

### **Dividing the Joint Tax Liability—Or the Refund**

Once you have prepared a joint income tax return, you will discover that you owe additional taxes or are due a refund. To avoid animosity and misunderstandings, you and your spouse must find a fair way to share the tax liability or divide the refund.

Of course, you need not do all of this work by yourself; a tax preparer can make these calculations for you. No matter who does the math, plug the numbers into the formula below. To do so, you must first figure out what you each would have owed (or would have received as a refund) if you had filed separately.

**Example: How to Calculate Your Share of a Refund on a Joint Tax Return**

|                                                                                            | <i>Example</i> | <i>You</i> |
|--------------------------------------------------------------------------------------------|----------------|------------|
| 1. Your individual separate tax liability<br>( <i>married filing separately</i> )          | \$3,000        |            |
| 2. Your spouse's individual separate tax liability<br>( <i>married filing separately</i> ) | \$7,000        |            |
| 3. Total separate tax liability [Step 1 + Step 2]                                          | \$10,000       |            |
| 4. Joint tax liability on return<br>( <i>married filing jointly</i> )                      | \$6,000        |            |
| 5. Your share of the total tax liability [Step 1 ÷ Step 3]                                 | .30            |            |
| 6. Your spouse's share of the total tax liability<br>[Step 2 ÷ Step 3]                     | .70            |            |
| 7. Your share of joint tax liability [Step 4 x Step 5]                                     | \$1,800        |            |
| 8. Your spouse's share of joint tax liability<br>[Step 4 x Step 6]                         | \$4,200        |            |
| 9. Total tax payments made by couple                                                       | \$12,000       |            |
| 10. Total tax payment made by you [in Step 9]                                              | \$3,000        |            |
| 11. Your share of the refund [Step 10 – Step 7]                                            | \$1,200        |            |

- Step 1. Prepare a separate tax return for yourself using the “married filing separately” status to find the amount you would owe individually if you and your spouse filed alone.
- Step 2. Prepare a separate tax return for your spouse using the “married filing separately” status to find the amount your spouse would owe individually if you and your spouse filed alone.
- Step 3. Add together each spouse's individual separate tax liability to determine the total amount of your separate tax liabilities.
- Step 4. Prepare a joint tax return using the “married filing jointly” status to determine your total joint tax liability.
- Step 5. Determine the percentage of the total taxes you owe by dividing your individual separate tax liability by the total separate tax liability.

- Step 6. Determine the percentage of the total taxes your spouse owes by dividing your spouse's individual separate tax liability by the total separate tax liability.
- Step 7. Determine the amount of the total taxes you owe by multiplying your joint tax liability by the percentage of the total taxes you owe.
- Step 8. Determine the amount of the total taxes your spouse owes by multiplying your joint tax liability by the percentage of the total taxes your spouse owes.
- Step 9. Calculate the total tax payments made by each spouse by adding all federal tax withheld, as shown on the W-2 forms, and all estimated tax payments made. If this amount is less than the amount in Step 4, more money must be paid to the IRS; if this amount is more than the amount in Step 4, the IRS will send you a refund.

**If you owe more to the IRS:**

- Step 10. Subtract the total amount of tax payments made by each spouse (Step 9) from each spouse's separate share of the joint tax liability (Step 5).
- Step 11. Send a check to the IRS for the amount due. The spouse who pays the IRS is entitled to be reimbursed by the other spouse, who must make up the difference between what he or she has already paid individually (through withholding or estimated tax payments) and that spouse's share of the amount the couple still owes the IRS.

**If you are entitled to a refund:**

- Step 10. Determine the amount of the total tax payment that should be refunded to each spouse by subtracting each spouse's individual share of the joint tax liability (Steps 7 and 8) from the amount each spouse has already paid to the IRS (through withholding or estimated tax payments).
- Step 11. The spouse who receives the refund from the IRS must reimburse the other spouse as determined in Step 10.



If you and your spouse anticipate receiving a tax refund on your joint return, don't forget that this money is likely to be considered marital property. That means it will be assigned or divided between the spouses as part of the property division upon divorce. For more on dividing up property, see Chapter 12.

## **Tax Issues Involving Temporary Alimony or Child Support**

Often in divorce negotiations or mediation, spouses reach informal agreements about temporary alimony or child support payments. But sometimes they neglect to get the agreement in writing or to get a court order outlining the agreement. Do not make this mistake. (Read Chapter 18 before entering into any agreement to pay or receive alimony or child support.)

Getting a court order is not difficult. If you and your spouse agree on the amount of temporary alimony and/or child support, you can put your agreement in writing as a “stipulation.” You (or your attorney) can then take the simple steps needed to get that stipulation turned into a court order. It involves asking a judge to sign the stipulation. You and your spouse should not have to appear in court.

If you're paying alimony, you may resent it—but at least there is one bright spot. Alimony, including temporary alimony, is tax deductible to the payer. For alimony to be deductible, however, the court must order it or the parties must agree to it in writing. If you pay alimony or temporary alimony based on an informal, oral agreement, you cannot deduct those payments on your tax return.

For alimony to be deductible, the payer and the recipient of alimony cannot file a joint return.

If you're the recipient of alimony, it is income you must report on your tax return. And beware: alimony payments made after the legal obligation to pay alimony ends—that is, voluntary payments—are not tax deductible to the payer, but they could be taxable income to the former spouse who received the payments.

Child support, unlike alimony, is neither deductible for the parent paying it nor taxable as income to the parent receiving it. However, regardless of whether you and your spouse are living apart, you will want to make arrangements for child support so that your children are adequately cared for. For more on child support agreements, see Chapter 18.

## Get Your Tax Agreement in Writing

Whatever you and your spouse decide to do about taxes, be sure to get the agreement in writing. Have it notarized or possibly even reviewed by an attorney. Be certain, too, to check with an accountant or a financial planner for advice on the tax implications of your divorce.



For more information on dealing with the IRS, see *Stand Up to the IRS*, by Frederick W. Daily (Nolo).

## Questions to Ask Your Tax Adviser

1. In my state, is income from separate property considered separate or marital income?
2. What income from separate property is considered to be separate property?
3. If my spouse and I ran a business while we were married, under what circumstances must I report the income and deductions on my own tax return now?
4. Is the income I earned after we separated but before the divorce becomes final considered separate or marital income? ■

# Property and Expenses: Who Owns and Who Owes What?

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|                                                               |     |
|---------------------------------------------------------------|-----|
| Who Owns What—Marital Property and the Laws of Your State ... | 156 |
| Jointly Owned Property .....                                  | 157 |
| Separately Owned Property .....                               | 158 |
| Debts .....                                                   | 159 |
| Who Knows What—Using Legal Discovery .....                    | 159 |
| Net Worth—What Do You Own and What Do You Owe?.....           | 160 |
| The Difference Between Assets and Income .....                | 172 |
| Cash Flow—Where Does the Money Go? .....                      | 173 |
| Questions to Ask Your Attorney .....                          | 177 |

*What—exactly—is at stake in your divorce? To answer that question, you must get a handle on your property and living expenses.*

In this chapter, you define which property is legally yours and which assets you may have to struggle for in the tug-of-war of divorce. You will also develop a much-needed picture of your cash flow. And you will learn about the use of legal discovery procedures if you have any trouble getting the information you need. The financial fact-finding you did in Chapter 8 (you *did* do it, didn't you?) will be immensely helpful here.

By completing the tasks that follow, you will lay the foundation for the analysis and decision making that must be done to reach your final settlement. Think of this stage as developing your database or stocking your pantry with the items you will need throughout the divorce process.

The four basic issues you must address at this point are:

- Who owns what—marital property and the laws of your state.
- Who knows what—using legal discovery.
- Net worth—what do you own and what do you owe?
- Cash flow—where does the money go?

## **Who Owns What—Marital Property and the Laws of Your State**

Before you begin to negotiate your divorce settlement, you must know what property you own alone—as opposed to what property is owned separately by your spouse or by the two of you together. Keep in mind that the rules that follow are general. To get the specifics on the property laws of your state, you will have to consult your lawyer or do some legal research.

Read this section for an overview of ownership, and then do whatever additional research is needed. Once you have determined which of your property is separate and which is marital, you will list this information in the *Net Worth Statement* in “Net Worth—What Do You Own and What Do You Owe,” below.

## Jointly Owned Property

The property that couples accumulate during marriage is called, straightforwardly enough, marital property. Depending on which state you live in, however, marital property will take different forms.

**Community Property: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.** (Alaska also gives married couples the option of identifying property held in trust as community property.) In community property states, all earnings during marriage and all property acquired with those earnings are considered community property owned jointly by the couple. Even if one spouse earned a salary during the marriage while the other one kept house, the salaried spouse's earnings are community property. Separate property in these states—that is, not “community”—consists for the most part of money and property that the individual spouses owned before marriage, as well as gifts and inheritances that either spouse receives during marriage.

At divorce, community property is divided equally (in half) between the spouses. A spouse who contributed separate money to an item bought with community funds—for instance, a wife who contributed her \$5,000 inheritance toward a \$20,000 down payment for the family home—may be entitled to reimbursement for that contribution. Conversely, a spouse who added community property money to a separate property item belonging to the other may be reimbursed.

In most community property states, a court has the discretion to divide the property equitably (fairly), if dividing the property in half would result in unfairness to one party. Additionally, in some community property states, a spouse whom the court considers at fault in ending the marriage may be awarded less than 50% of the community property. (These exceptions do not apply in California.)

**Equitable Distribution of Property: All Other States.** In the District of Columbia and the 41 states that follow equitable distribution principles, assets and earnings accumulated during marriage are divided equitably (fairly) at divorce. In theory, equitable means equal, or nearly so. In practice, however, equitable often means that as much as  $\frac{2}{3}$  of the property goes to the higher wage earner and as little as  $\frac{1}{3}$  goes to the lower (or non-) wage earner—unless the court believes it is fairer to award one or the other spouse more. In some equitable distribution states, if a spouse obtains a



fault divorce, the “guilty” spouse may receive less than a full share of the marital property upon divorce.

## **Separately Owned Property**

In all states, a married person can treat certain types of earnings and assets as separate property. At divorce, this separate property is not divided under the state’s property distribution laws, but rather is kept by the spouse who owns it.

In community property states, the following is considered separate property:

- property accumulated before marriage
- property accumulated during marriage with premarital earnings (such as income from a pension that vested before marriage) or with the proceeds of the sale of separately owned premarital property
- gifts given to only one spouse
- inheritances, and
- property acquired after permanent separation.

In the equitable distribution states, separate property includes:

- property accumulated by a spouse before marriage
- gifts given to only one spouse, and
- inheritances.

In addition, some equitable distribution states consider wages kept separate from other marital property to be separate property.

### **Separate Is Separate Unless It’s Mixed**

In both community property and equitable distribution states, the separate property of a spouse generally remains separate property. However, if it’s mixed with marital property or the other spouse’s separate property, you may not be able to keep your separate property separate, unless you can trace the origin of your separate property and show how it was commingled.

## Debts

Debts incurred during a marriage are usually considered joint debts—that is, during the marriage, both spouses are legally responsible for them. When a couple divorces, however, responsibility for marital debts is allocated in accordance with the property division laws of the state.

This usually means that the debts are divided equally or equitably (fairly, though not in half), especially when they were incurred for food, shelter, clothing, and medical care (called necessities). The court also considers who is better able to pay the debts (the spouse with the higher income and/or lower living expenses). If a couple has many debts but also has a great deal of property, the spouse better able to pay the debts may be ordered to assume the payments and also to receive a larger share of the property.

## Who Knows What—Using Legal Discovery

As described in Chapter 8, there are several ways to gather financial information during a divorce. Doing it yourself not only keeps down your lawyer's bill but also educates you about your family's finances and prepares you to negotiate from a position of strength.

If you can't find the information yourself, however, and all efforts to collect it informally fail, you can have your lawyer conduct "discovery." Discovery is the term for formal procedures used to obtain information during a lawsuit. As with all matters in your divorce, remember that the attorney works for you. You should be the one making the decisions about how extensive discovery procedures should be.

If you've never seen the checkbook and have signed the tax returns for years without reviewing them, then your lawyer may have to do a lot of digging to create a picture of your financial life. Likewise, if you have participated in budgeting and bookkeeping, but your spouse owns a cash-and-carry business that you suspect is being used to hide assets, discovery may be worth every penny you spend.

On the other hand, if you and your spouse have few assets and you have a pretty good idea of what you're both worth, then using discovery to ferret out more information may simply be a waste of money.

Apply the maxim: Think financially and act legally, and you should be fine.

In a divorce, the common discovery devices include:

**Deposition (or examination before trial).** A deposition is a proceeding in which a witness or party must answer questions orally under oath before a court reporter. In divorces, many lawyers want to take the deposition of the other spouse in order to ask about potential hidden assets.

**Interrogatories.** Interrogatories are written questions sent by one party to the other to be answered in writing under oath. Interrogatories are often used to ask a spouse to list all bank accounts, investment accounts, and other assets ever held by that spouse.

**Request (or notice) for production of documents.** This is a request to a party to hand over certain defined documents. In divorce cases, spouses often request from each other bank statements, profit and loss statements, tax returns, pay stubs, and other documents showing earnings, assets, and debts.

**Request (or notice) for inspection.** This is a request by a spouse to look at items and documents in the possession or control of the other spouse. Items commonly inspected are original financial documents, houses, and cars. In divorces, the request often comes up regarding house appraisals. For example, Bill and Bernice are divorcing. The court orders Bill out of the family home to allow Bernice to stay with the children. They cannot agree on the value of the house, and Bernice won't give Bill's appraiser access in order to evaluate it. Bill must request an inspection.

**Subpoena and subpoena duces tecum.** A subpoena is an order telling a witness to appear at a deposition (or at trial). A subpoena duces tecum is an order to provide certain documents to a specific party. These devices are commonly used to get documents or testimony directly from banks, insurance companies, stockbrokers, and the like.

## **Net Worth—What Do You Own and What Do You Owe?**

Generally, couples divide marital net worth at divorce. Subtracting what you owe from what you own reveals that net worth. It is important to know that net worth number because if you go to trial the judge will attempt to see that you each end up with your fair share, depending on the laws of your state. But it's also important for you to know specifically—item by item—

what there is to divide. If, as is usually the case, you (perhaps with the help of attorneys or a mediator) are able to negotiate a property settlement and avoid a court battle, you'll want to know exactly who owns what and how much it's worth. Only by knowing that can you negotiate the fairest deal.

The *Assets and Liabilities Worksheet* in this chapter will help you figure this out. It will also help you complete the *Marital Balance Sheet* in Chapter 19 that will set out your joint property, the equity in it, and its before-tax value. Your home, for example, might have a fair market value of \$400,000. But if the loan is \$250,000, you have just \$150,000 in equity. Further, you or your spouse may have contributed from separate property unequal amounts of cash for the down payment. That kind of information must be tabulated if you are to have a realistic view of what true assets there are to divide.

While it may seem laborious to compile all these facts and figures, your effort will pay off in succeeding chapters. We will refer back to these lists often. Patience and attention to detail now will be rewarded later.

To figure out your net worth, use the worksheets on the following pages. If you can't fill in everything in each category, don't worry. Gather as much information as you can. If you eventually hire someone to help you, you'll still be far ahead and will have saved money by gathering some of the information yourself.

### **Do You Hate Filling Out Forms?**

Almost no one enjoys the task of writing information into small blanks on financial forms. In your divorce, however, you must get your financial facts straight. Any attorney or other professional you consult will want the information you are documenting in your *Net Worth* and *Cash Flow* statements. Most important, you will be organizing the information you must have to make the best decisions in your divorce.

Get help or meet with others who are dealing with the same issues so you can assist each other when the work gets tedious. You are not completing these forms as a mere exercise—you are using them to lay the groundwork for your new financial life.

Make copies of these forms so you can use them throughout your divorce and make changes as events change. Also, keep copies of the documents you consulted to fill out the forms.

**Instructions: Net Worth Statement Assessing Assets**

To determine your net worth, you need only estimate the current value (last column) of each asset you own. Complete the other columns if the information is available. List all marital property—not just the property in which you have an interest. These columns will help you understand as much as possible about your assets so you can make informed decisions when it comes time to divide your marital property.

As you fill in the information, subtotal the amounts in the last (far right) column for various asset categories (such as real estate or personal property). You will then transfer these subtotals to the *Net Worth: Balance Sheet Summary* that follows.

**Column 1: Title or owner.** List the owner of each item of property, and how ownership is listed on any title document. You or your spouse may have an ownership interest in an item of property even if title is in the other spouse's name only. This could happen if marital money or labor went toward the purchase of, payments on, or improvements to the property. Several types of property—such as houses, cars, and stocks—come with title documents (the house deed, car registration, and stock certificate). When property is owned jointly, these title documents specify exactly how title is held—meaning how the property is owned. The possible ways to hold title to property are:

- *Joint tenancy.* Co-owners of joint tenancy property own the property in equal shares. When two or more persons own property as joint tenants, and one owner dies, the remaining owner(s) automatically inherits the share owned by the deceased person. This is termed the “right of survivorship.” For example, if a husband and wife own their house as joint tenants and the wife dies, the husband ends up owning the entire house, even if the wife attempted to give away her half of the house in her will.

In most states, a joint tenant can terminate a joint tenancy and change title to tenancy in common at any time, even without a spouse's knowledge. You only need to do this if you don't want your spouse to inherit your share if you die. The easiest way to do this is to write up a deed stating something like the following:

*Leslie Matthews transfers her one-half share of the home at 1312 Lincoln Drive from Leslie Matthews joint tenant to Leslie Matthews tenant in common.*

When such a change is made, the right to survivorship no longer holds—but if you want the property to go to someone else before your divorce is final, make sure you have a will.

- *Tenancy by the entirety.* Tenancy by the entirety is a way married couples can hold title to property in some noncommunity property states. Tenancy by the entirety is very similar to joint tenancy in that upon the death of one of the spouses, the property automatically passes to the surviving spouse, regardless of contrary provisions in the will. Unlike joint tenancy, however, one person cannot unilaterally sever the tenancy by the entirety. After divorce, former spouses cannot hold title as tenants by the entirety. Instead, title will be tenancy in common (just below) unless you specify joint tenancy.
- *Tenancy in common.* Tenancy in common is a way for any two or more people to hold title to property together. Each co-owner has an “undivided interest” in the property, which means that no owner holds a particular part of the property and all co-owners have the right to use all the property. Each owner is free to sell or give away his or her interest. On death, an owner’s interest passes through a will or by the automatic inheritance laws if he or she had no will. Divorcing spouses who plan to own property after they split usually hold the property as tenants in common. Occasionally, ex-spouses will hold property in joint tenancy.
- *Community property.* Married couples in community property states can take title as community property. Community property is divided equally at the end of their marriage. Property owned jointly after divorce cannot be held as community property.
- *Separate title.* Sometimes title will be in only one person’s name, even if both spouses own the property. The property will be divided between the husband and wife if the spouse whose name is not on the title document can prove an ownership interest. For example, if the house is in the wife’s name only, but the canceled checks for the mortgage payments are written on the husband’s separate account, the property will be divided.

**Column 2: Source of asset.** Specify where the money to purchase the asset came from. Be sure to note whether the source is separate or marital property or income, and keep copies of all records that show the disposition of separate property.

**Column 3: Date of Purchase/Acquisition.** Put the date you bought items or received a gift or inheritance. For items bought over time—such as shares of the same stock—list all dates and the number of shares bought each time. Use a separate sheet of paper if necessary to record information on these assets.

**Column 4: Current Balance or Market Value.** For deposit accounts and similar investments, list the balance from your last statement. Keep copies of each statement.

Market value means what you could sell the item for now, not your purchase price or replacement cost. For valuable assets, such as art, jewelry, collections, antiques, furs, china, and silver, list the wholesale value. To determine these values, you might go to pawnshops, antique stores, jewelers, art galleries, auctioneers, or sterling silver replacement firms; you might also visit eBay at [www.eBay.com](http://www.eBay.com) to find sale prices on the Web. For automobiles, use the *Kelley Blue Book* value. (Check out their website, [www.kbb.com](http://www.kbb.com).) For household furniture, furnishings, and personal effects, give your best estimate of garage sale value.

**Column 5: Debt.** How much do you still owe on this item?

**Column 6: Equity or Legal Value.** Equity is the actual value of the item after the debt is paid off. Subtract Debt from Current Balance/Market Value to get this figure.

### Instructions: Net Worth Statement Calculating Liabilities

The other half of determining your net worth is listing your liabilities (that is, what you owe). The Balance Due in the last column on the worksheet shows what you currently owe in each liability category. But you should also fill in the information in the other columns because it will be useful in working on your *Cash Flow Statement* and in evaluating assets in your settlement negotiations.

**Column 1: Original Loan Amount.** Enter the amount you originally borrowed. Don't include interest. On your credit cards, put the amount of your purchases or cash advances.

**Column 2: Date Made.** Put the date the debt was incurred. For credit cards, note the various dates you charged items.

**Column 3: Interest Rates.** List all interest rates. If the rate is variable (as many mortgages and credit cards are), list the present rate and note that it is variable.

| Net Worth Statement: Assets and Liabilities Worksheet |                       |                       |                                     |                                       |      |                          |
|-------------------------------------------------------|-----------------------|-----------------------|-------------------------------------|---------------------------------------|------|--------------------------|
| Assets                                                | Title<br>H/W/Jt/Cmnty | Source<br>Sep/Marital | Date of<br>Purchase/<br>Acquisition | Current<br>Balance or<br>Market Value | Debt | Equity or<br>Legal Value |
| Cash & Cash Equivalents                               |                       |                       |                                     |                                       |      |                          |
| Cash                                                  |                       |                       |                                     |                                       |      |                          |
| CDs                                                   |                       |                       |                                     |                                       |      |                          |
| CDs                                                   |                       |                       |                                     |                                       |      |                          |
| Checking                                              |                       |                       |                                     |                                       |      |                          |
| Checking                                              |                       |                       |                                     |                                       |      |                          |
| Savings                                               |                       |                       |                                     |                                       |      |                          |
| Credit Union                                          |                       |                       |                                     |                                       |      |                          |
| Money Market Funds                                    |                       |                       |                                     |                                       |      |                          |
| Money Market Funds                                    |                       |                       |                                     |                                       |      |                          |
| Money Market Funds                                    |                       |                       |                                     |                                       |      |                          |
| Other Liquid Assets                                   |                       |                       |                                     |                                       |      |                          |
| Subtotal,<br>Cash & Equivalents                       | \$ _____              |                       |                                     |                                       |      |                          |



| Net Worth Statement: Assets and Liabilities Worksheet (cont'd) |                       |                       |                                     |                                       |      |                          |
|----------------------------------------------------------------|-----------------------|-----------------------|-------------------------------------|---------------------------------------|------|--------------------------|
| Assets                                                         | Title<br>H/W/Jt/Cmnty | Source<br>Sep/Marital | Date of<br>Purchase/<br>Acquisition | Current<br>Balance or<br>Market Value | Debt | Equity or<br>Legal Value |
| Marketable Assets & Investments                                |                       |                       |                                     |                                       |      |                          |
| Life Insurance (cash values)                                   |                       |                       |                                     |                                       |      |                          |
| Life Insurance (whole life policies)                           |                       |                       |                                     |                                       |      |                          |
| Stocks                                                         |                       |                       |                                     |                                       |      |                          |
| Bonds                                                          |                       |                       |                                     |                                       |      |                          |
| Mutual Funds                                                   |                       |                       |                                     |                                       |      |                          |
| Loans/Accounts Receivable                                      |                       |                       |                                     |                                       |      |                          |
| General Partnerships                                           |                       |                       |                                     |                                       |      |                          |
| Limited Partnerships                                           |                       |                       |                                     |                                       |      |                          |
| Liens & Judgments Due You                                      |                       |                       |                                     |                                       |      |                          |
| Mortgages & Notes Receivable                                   |                       |                       |                                     |                                       |      |                          |
| Contract Rights                                                |                       |                       |                                     |                                       |      |                          |
| Subtotal, Marketable Assets & Investments                      | \$ _____              |                       |                                     |                                       |      |                          |

| Net Worth Statement: Assets and Liabilities Worksheet (cont'd) |                       |                       |                                     |                                       |      |                          |
|----------------------------------------------------------------|-----------------------|-----------------------|-------------------------------------|---------------------------------------|------|--------------------------|
| Assets                                                         | Title<br>H/W/Jt/Cmnty | Source<br>Sep/Marital | Date of<br>Purchase/<br>Acquisition | Current<br>Balance or<br>Market Value | Debt | Equity or<br>Legal Value |
| Retirement Plan Assets                                         |                       |                       |                                     |                                       |      |                          |
| Keogh or Self-Employment Plan                                  |                       |                       |                                     |                                       |      |                          |
| IRA                                                            |                       |                       |                                     |                                       |      |                          |
| IRA                                                            |                       |                       |                                     |                                       |      |                          |
| Roth IRA                                                       |                       |                       |                                     |                                       |      |                          |
| Employee Stock Ownership Plan                                  |                       |                       |                                     |                                       |      |                          |
| Pension/Profit Sharing - 401(k)                                |                       |                       |                                     |                                       |      |                          |
| Annuity Plan                                                   |                       |                       |                                     |                                       |      |                          |
| Subtotal, Retirement Plan Assets                               | \$ _____              |                       |                                     |                                       |      |                          |
| Real Estate                                                    |                       |                       |                                     |                                       |      |                          |
| Residence                                                      |                       |                       |                                     |                                       |      |                          |
| Vacation Home                                                  |                       |                       |                                     |                                       |      |                          |
| Income Property                                                |                       |                       |                                     |                                       |      |                          |
| Unimproved Real Property/Lots                                  |                       |                       |                                     |                                       |      |                          |
| Subtotal, Real Estate                                          | \$ _____              |                       |                                     |                                       |      |                          |

| Net Worth Statement: Assets and Liabilities Worksheet (cont'd) |                       |                       |                                     |                                       |      |                          |
|----------------------------------------------------------------|-----------------------|-----------------------|-------------------------------------|---------------------------------------|------|--------------------------|
| Assets                                                         | Title<br>H/W/Jt/Cmnty | Source<br>Sep/Marital | Date of<br>Purchase/<br>Acquisition | Current<br>Balance or<br>Market Value | Debt | Equity or<br>Legal Value |
| Business Interests                                             |                       |                       |                                     |                                       |      |                          |
| Closely Held Private Stock                                     |                       |                       |                                     |                                       |      |                          |
| Sole Proprietor                                                |                       |                       |                                     |                                       |      |                          |
| Other Business Assets                                          |                       |                       |                                     |                                       |      |                          |
| Subtotal, Business Interests                                   | \$ _____              |                       |                                     |                                       |      |                          |
| Personal Property                                              |                       |                       |                                     |                                       |      |                          |
| Vehicle                                                        |                       |                       |                                     |                                       |      |                          |
| Vehicle/Motor Home                                             |                       |                       |                                     |                                       |      |                          |
| Motorcycle/Off-Road Vehicle                                    |                       |                       |                                     |                                       |      |                          |
| Home Furnishings (inc. art, antiques, silver, heirlooms)       |                       |                       |                                     |                                       |      |                          |
| Jewelry/Furs                                                   |                       |                       |                                     |                                       |      |                          |
| Collections/Coins/Stamps                                       |                       |                       |                                     |                                       |      |                          |
| Boat/Plane                                                     |                       |                       |                                     |                                       |      |                          |
| Horses/Other Livestock                                         |                       |                       |                                     |                                       |      |                          |
| Other (specify)                                                |                       |                       |                                     |                                       |      |                          |
| Subtotal, Personal Property                                    | \$ _____              |                       |                                     |                                       |      |                          |

| Net Worth Statement: Assets and Liabilities Worksheet (cont'd) |                 |               |               |           |                 |             |
|----------------------------------------------------------------|-----------------|---------------|---------------|-----------|-----------------|-------------|
| Liabilities                                                    | Original Amount | Date Incurred | Interest Rate | Loan Term | Monthly Payment | Balance Due |
| Mortgages/Loans                                                |                 |               |               |           |                 |             |
| Mortgage                                                       |                 |               |               |           |                 |             |
| Mortgage                                                       |                 |               |               |           |                 |             |
| Equity Loans                                                   |                 |               |               |           |                 |             |
| Subtotal, Mortgages/Loans                                      | \$ _____        |               |               |           |                 |             |
| Vehicle Loans                                                  |                 |               |               |           |                 |             |
| Loan                                                           |                 |               |               |           |                 |             |
| Loan                                                           |                 |               |               |           |                 |             |
| Subtotal, Vehicle Loans                                        | \$ _____        |               |               |           |                 |             |
| Other Loans (Be sure to note if loans are secured by an asset) |                 |               |               |           |                 |             |
| Bank Loan                                                      |                 |               |               |           |                 |             |
| Bank Loan                                                      |                 |               |               |           |                 |             |
| Loan Against Retirement Plan                                   |                 |               |               |           |                 |             |
| Loan Against Brokerage Account                                 |                 |               |               |           |                 |             |
| Private Loan                                                   |                 |               |               |           |                 |             |
| Student Loans                                                  |                 |               |               |           |                 |             |
| Student Loans                                                  |                 |               |               |           |                 |             |
| Subtotal, Other Loans                                          | \$ _____        |               |               |           |                 |             |

| Net Worth Statement: Assets and Liabilities Worksheet (cont'd) |                 |               |               |           |                 |             |
|----------------------------------------------------------------|-----------------|---------------|---------------|-----------|-----------------|-------------|
| Liabilities                                                    | Original Amount | Date Incurred | Interest Rate | Loan Term | Monthly Payment | Balance Due |
| Credit Accounts                                                |                 |               |               |           |                 |             |
| Credit/Charge Account                                          |                 |               |               |           |                 |             |
| Credit/Charge Account                                          |                 |               |               |           |                 |             |
| Credit/Charge Account                                          |                 |               |               |           |                 |             |
| Credit/Charge Account                                          |                 |               |               |           |                 |             |
| Subtotal, Credit Accounts                                      | \$ _____        |               |               |           |                 |             |
| Miscellaneous Debts                                            |                 |               |               |           |                 |             |
| Claims                                                         |                 |               |               |           |                 |             |
| Unsettled Damages                                              |                 |               |               |           |                 |             |
| Liens & Judgments Owed                                         |                 |               |               |           |                 |             |
| Leases                                                         |                 |               |               |           |                 |             |
| Taxes Owed                                                     |                 |               |               |           |                 |             |
| Subtotal, Miscellaneous Debts                                  | \$ _____        |               |               |           |                 |             |

Net Worth: Balance Sheet Summary

Instructions: Enter the subtotal for each Asset and Liability category from the last (far right) column of the asset and liability worksheets. Add those figures to get total Assets and Liabilities. To find your net worth, subtract Total Liabilities from Total Assets.

|                                      |          |          |
|--------------------------------------|----------|----------|
| Summary of Assets                    |          |          |
| Cash and Cash Equivalents            | \$ _____ |          |
| Marketable Assets/Investments        | \$ _____ |          |
| Retirement Plans                     | \$ _____ |          |
| Business Interests                   | \$ _____ |          |
| Personal Property                    | \$ _____ |          |
| Total Assets:                        |          | \$ _____ |
| Summary of Liabilities               |          |          |
| Mortgages/Loans                      | \$ _____ |          |
| Vehicle Loans                        | \$ _____ |          |
| Other Loans                          | \$ _____ |          |
| Credit Accounts                      | \$ _____ |          |
| Miscellaneous Debts                  | \$ _____ |          |
| Total Liabilities:                   |          | \$ _____ |
| Net Worth (assets minus liabilities) |          |          |
|                                      |          | \$ _____ |

**Column 4: Loan Term.** How many years do you have to repay the loan or debt?

**Column 5: Monthly Payment.** List the amount you actually pay each month.

**Column 6: Balance Due.** Enter how much it would cost to pay off the loan in full. Check with the lender or creditor to determine the loan payoff amount. This balance is your current liability. The subtotal for each liability will be the amount you transfer to the *Net Worth: Balance Sheet Summary* chart, which follows.

## The Difference Between Assets and Income

You've just inventoried your assets and how much they're worth. In the next section, you'll be examining your income—the stream of money that enables you to pay your expenses.

Does the difference between assets and income matter much? After all, in the end they're both your money, right? Well, when you're divorcing, the distinction is crucial. *Assets* are what get divided in the course of your divorce settlement. *Income* is what a court primarily looks at in determining how much alimony and child support you're entitled to, or how much you have to pay.

Some items are considered both income and assets. And both terms cover more things than you might think. Now is the time to be as accurate as possible about what your income and assets both are.

You can begin to define "income" by using the IRS's rules—if you have to pay taxes on it when filing your returns, it's income. The government generally taxes you on your salary and wages, including tips, commissions, bonuses, vacation pay, sick leave, and compensatory time, as well as distributions from retirement, deferred compensation plans, and income from investments. You also owe taxes on income paid for lost wages and salary, such as severance pay, workers' compensation, unemployment insurance, disability insurance, and some disability pensions.

But for purposes of determining alimony and child support, income isn't just what the IRS says it is. A judge will consider virtually every possible source of funds in calculating the amount. (For more on the legal, financial, and emotional realities of alimony and child support, see Chapter 18.)

As for assets, certain ones are obvious: cash, house, car, bank accounts, etc. But others are more obscure and easy to miss. (See Chapter 8 for a rundown of easy-to-forget assets.)

"Sources of Compensation" lists various types of compensation and assets—the items of value you're likely to be dealing with when ending a marriage. The table indicates whether each one is treated as income for purposes of determining child and spousal support, or whether it is considered marital property that may be divided when the marriage ends. As you know, sometimes an item can be both.

## Cash Flow—Where Does the Money Go?

Cash flow is how money comes in and goes out. Regardless of how your settlement winds up, a divorce forces *two* households to exist—at least for a while—on the same income that had supported only *one*. So you need to know as precisely as possible what it costs you to live. And, of course, you must take the needs and expenses of your children into account.

The cash flow worksheets on the next few pages outline your sources of income and day-to-day living expenses. While filling out the worksheets, be realistic. And do not worry if you do not have enough information for every line. Do the best you can.



| Sources of Compensation                                                |                                                                                            |                                                |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------------|
| Source                                                                 | Income for Support Purposes?                                                               | Asset Subject to Division?                     |
| Capital gains from sale of assets                                      | Yes                                                                                        | Yes                                            |
| Social Security benefits                                               | Yes                                                                                        | No                                             |
| Veterans' benefits                                                     | Yes                                                                                        | No                                             |
| Military personnel fringe benefits, such as overseas housing allowance | Yes                                                                                        | No                                             |
| Gifts                                                                  | Generally no                                                                               | No                                             |
| Prizes                                                                 | Possibly                                                                                   | Usually yes, if won during marriage            |
| Educational grants and loans                                           | No, at least in some states                                                                | No                                             |
| Income of new spouse or partner                                        | No, in most states                                                                         | No                                             |
| Reimbursement for employment expenses                                  | Yes, to the extent it reduces cost of living                                               | Yes, if expenses were paid out during marriage |
| Personal loans from corporations                                       | Yes                                                                                        | Yes                                            |
| Retained earnings of private corporation                               | Yes                                                                                        | Yes                                            |
| Depreciation on equipment                                              | Yes                                                                                        | Equipment is treated as property               |
| Depletion allowance from oil and gas interests                         | Yes                                                                                        | Interests are treated as property              |
| Personal expenses paid by a business                                   | Yes                                                                                        | Payment increases value of marital business    |
| Voluntary contributions to pension, retirement, and savings plans      | Yes                                                                                        | Yes                                            |
| Voluntary debt reduction                                               | Yes                                                                                        | Yes                                            |
| Stock options                                                          | Yes, whether exercised or not, as long as they are exercisable and have increased in value | Yes, generally                                 |
| Accrued vacation time or sick time payable in cash                     | Yes                                                                                        | Yes                                            |

### How Much Do Children Cost?

You now have a good idea of your estimated annual expenses. But what proportion of that goes for raising your kids? Knowing that figure could be important as you negotiate child support.

So you need to estimate how much you spend on your kids. To find that sum, do the following simple calculation:

|                                    |          |
|------------------------------------|----------|
| Total monthly expenses             | \$ _____ |
| Subtract total child care expenses | \$ _____ |
| Subtotal =                         | \$ _____ |

Now multiply that subtotal by the percentage of your household that's composed of children. (For example, if you have two children living with you, that's 2 out of 3 or  $\frac{2}{3}$ ; if three out of four residents are children, that's  $\frac{3}{4}$ , and so on.)

(Subtotal) \_\_\_\_\_ x (fraction representing children) \_\_\_\_\_ = \_\_\_\_\_

That's the children's pro rata share of non-child-care expenses. Now add back in the amount of child care expenses.

Child Care Expenses = \$ \_\_\_\_\_

And your total is the child care expenses plus the children's pro rata share of other expenses.

Total estimated child-related expenses = \$ \_\_\_\_\_

### Instructions: Cash Flow Statement Adding Up Income

Income generally comes from three sources:

- earned salary or wages from your job as an employee
- earnings from your own business as a self-employed individual, and
- miscellaneous other sources, such as job bonuses, interest earned from investments, and income from a disability insurance policy.

Record all sources of income for you and your spouse, completing only those categories that apply. For investments from marital property such as interest income, rental property, and notes and trust deeds, divide the monthly income by two and enter half in your column and half in your spouse's column.

If an investment or asset is not owned 50-50, enter the appropriate percentages that apply. For instance, suppose a second house that produces rental income was bought partially with one spouse's separate property and partially with marital property (the income earned during marriage). In that case, the split might be 75-25 instead of 50-50.

If either you or your spouse holds more than one job or owns a self-run business, total your income on a separate sheet of paper and enter the total on this worksheet.

### **Instructions: Cash Flow Statement Estimating Expenses**

Designed to create a realistic picture of your cash flow, this worksheet is divided into 15 categories, such as residence, child care, installment debt, transportation, insurance, and other expenses.

To determine your current expenses, record the actual amount you spent for the past month for each item that applies. Multiply this monthly average by 12 and enter the amount at the bottom of the page. Don't forget to include once-a-year expenses such as insurance premiums or real estate taxes. Finally, estimate how much of each expense is allocated for your children, and enter it in the box at the end of this chapter.

### **Listing Credit Card Expenses**

To get a clear picture of your spending, list your various credit card expenditures under appropriate categories. For example, if your Visa bill is \$198, with \$120 spent for clothes and \$78 for meals out, and you pay the bill off in full each month, enter the \$120 under clothes and \$78 under food expenses. If, however, you carry a balance on your credit card bill—for example, the bill totals \$4,000 now and you make monthly payments of \$300—enter the amount of the monthly payment under installment debt, and do not list the payment under the specific expense category.

Certain payments could be listed under more than one category. For example, a car payment could be considered a loan payment under the Installment Debt category, but may also be listed under the Transportation category. To help develop a picture of where your money actually goes, expense items are specified whenever possible—as with the car payment. When you complete the worksheet, double check it to be sure you have not listed the same expenses under more than one category.

Income and expenses must be considered together. If you're spending too much, you've got to reduce those expenses or increase your income. Otherwise, you'll find yourself facing serious debt problems.

## Questions to Ask Your Attorney

1. In my state, does the way title is held determine the disposition of property at divorce? Does it determine whether property is characterized as “marital” or “separate”?
2. Does interest, income or appreciation on separate property belong to “me” or to “us”?
3. What happens if that asset loses money?
4. Are debts in my spouse's name separate property or marital property?
5. Am I liable for my spouse's credit card debt even though I did not sign the credit application?

| Cash Flow: Income and Expenses                                                                                                      |                                                                         |                |           |                |           |
|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|----------------|-----------|----------------|-----------|
| Income                                                                                                                              |                                                                         | Self           |           | Spouse         |           |
|                                                                                                                                     |                                                                         | Per Pay Period | Per Month | Per Pay Period | Per Month |
| A. Salary & Wages—Pay period is: <input type="checkbox"/> weekly <input type="checkbox"/> biweekly <input type="checkbox"/> monthly |                                                                         |                |           |                |           |
| Gross income (including commissions, allowances, bonuses, and overtime):                                                            |                                                                         |                |           |                |           |
| Subtract:                                                                                                                           | Federal & State Taxes                                                   |                |           |                |           |
|                                                                                                                                     | FICA-Social Security                                                    |                |           |                |           |
|                                                                                                                                     | Other: medical or other insurance, pension, stock plans, union dues ... |                |           |                |           |
| Net Income from Salary & Wages                                                                                                      |                                                                         |                |           |                |           |
| B. Self-employment                                                                                                                  |                                                                         |                |           |                |           |
| Gross income                                                                                                                        |                                                                         |                |           |                |           |
| Subtract:                                                                                                                           | Federal & State Taxes                                                   |                |           |                |           |
|                                                                                                                                     | Self-employment Taxes                                                   |                |           |                |           |
| Net Income from Self-employment                                                                                                     |                                                                         |                |           |                |           |

| Cash Flow: Income and Expenses (cont'd)               |                |           |                |           |  |
|-------------------------------------------------------|----------------|-----------|----------------|-----------|--|
| Income                                                | Self           |           | Spouse         |           |  |
|                                                       | Per Pay Period | Per Month | Per Pay Period | Per Month |  |
| C. Other Sources                                      |                |           |                |           |  |
| Dividends                                             |                |           |                |           |  |
| Interest income                                       |                |           |                |           |  |
| Rental property                                       |                |           |                |           |  |
| Royalties                                             |                |           |                |           |  |
| Notes and trust deeds                                 |                |           |                |           |  |
| Annuities, pensions/401(k)                            |                |           |                |           |  |
| Alimony                                               |                |           |                |           |  |
| Child support                                         |                |           |                |           |  |
| Social Security                                       |                |           |                |           |  |
| Income tax refund                                     |                |           |                |           |  |
| Other (Miscellaneous)*                                |                |           |                |           |  |
| Subtract: Any deductions                              |                |           |                |           |  |
| Net Income From Other Sources                         |                |           |                |           |  |
| Total Net Monthly Income From All Sources             |                |           |                |           |  |
| Estimated Net Annual Income (net monthly income x 12) |                |           |                |           |  |

\* Include income from trusts, disability, unemployment insurance, welfare, and other public assistance programs.

| Cash Flow: Income and Expenses (cont'd)                  |                  |         |      |
|----------------------------------------------------------|------------------|---------|------|
|                                                          | Monthly Expenses | Husband | Wife |
| Residence (family home and vacation home, if applicable) |                  |         |      |
| Rent/mortgage                                            |                  |         |      |
| Property taxes                                           |                  |         |      |
| House insurance                                          |                  |         |      |
| Savings for repairs                                      |                  |         |      |
| Maintenance, general repairs, & painting                 |                  |         |      |
| Lawn/garden service                                      |                  |         |      |
| Supplies                                                 |                  |         |      |
| Pool care                                                |                  |         |      |
| Housecleaning                                            |                  |         |      |
| Pest control                                             |                  |         |      |
| HOA fees                                                 |                  |         |      |
| Other (specify):                                         |                  |         |      |
| Total Maintenance                                        |                  |         |      |
| Total Residence Expenses                                 |                  |         |      |
| Clothing                                                 |                  |         |      |
| For yourself                                             |                  |         |      |
| For children                                             |                  |         |      |
| Total Clothing Expenses                                  |                  |         |      |

| Cash Flow: Income and Expenses (cont'd)                                       |         |      |  |
|-------------------------------------------------------------------------------|---------|------|--|
| Monthly Expenses                                                              | Husband | Wife |  |
| Medical and Dental Care (expenses not covered by insurance; include children) |         |      |  |
| Doctors                                                                       |         |      |  |
| Hospital                                                                      |         |      |  |
| Counseling/psychiatrist                                                       |         |      |  |
| Prescriptions                                                                 |         |      |  |
| Optometrist/eyecare                                                           |         |      |  |
| Dentist/orthodontist                                                          |         |      |  |
| Lab costs                                                                     |         |      |  |
| Vitamins                                                                      |         |      |  |
| Other (specify):                                                              |         |      |  |
| Total Medical/Dental Expenses                                                 |         |      |  |
| Insurance (do not include property insurance from Residence Expenses)         |         |      |  |
| Life insurance                                                                |         |      |  |
| Disability insurance                                                          |         |      |  |
| Personal property insurance                                                   |         |      |  |
| Umbrella policy                                                               |         |      |  |
| Other (specify):                                                              |         |      |  |
| Total Insurance Expenses                                                      |         |      |  |



| Cash Flow: Income and Expenses (cont'd)        |                  |         |      |
|------------------------------------------------|------------------|---------|------|
|                                                | Monthly Expenses | Husband | Wife |
| Child Care Expenses                            |                  |         |      |
| Babysitter/day care                            |                  |         |      |
| Nursery school                                 |                  |         |      |
| Lessons (art, sports, music, etc.)             |                  |         |      |
| Allowances                                     |                  |         |      |
| School tuition                                 |                  |         |      |
| School lunches                                 |                  |         |      |
| School transportation                          |                  |         |      |
| School books and supplies                      |                  |         |      |
| School uniforms/clothing                       |                  |         |      |
| Extracurriculars                               |                  |         |      |
| Other (specify):                               |                  |         |      |
| Total Child Care Expenses                      |                  |         |      |
| Food at Home/Household Supplies                |                  |         |      |
| Groceries/household supplies                   |                  |         |      |
| Liquor/wine                                    |                  |         |      |
| Health/diet food                               |                  |         |      |
| Other (specify):                               |                  |         |      |
| Total Food at Home/Household Supplies Expenses |                  |         |      |

| Cash Flow: Income and Expenses (cont'd) |                  |         |      |
|-----------------------------------------|------------------|---------|------|
|                                         | Monthly Expenses | Husband | Wife |
| Food Outside Home                       |                  |         |      |
| Restaurant meals                        |                  |         |      |
| Socializing outside home                |                  |         |      |
| Lessons (art, sports, music, etc.)      |                  |         |      |
| Total Food Outside Home Expenses        |                  |         |      |
| Entertainment Expenses                  |                  |         |      |
| Movies                                  |                  |         |      |
| Videos                                  |                  |         |      |
| Plays                                   |                  |         |      |
| Concerts                                |                  |         |      |
| Sports events                           |                  |         |      |
| Gym/club dues                           |                  |         |      |
| Entertaining/catering                   |                  |         |      |
| Records/tapes/CDs                       |                  |         |      |
| Books/magazines/newspapers              |                  |         |      |
| Family trips/vacations                  |                  |         |      |
| Hobby supplies                          |                  |         |      |
| Other (specify):                        |                  |         |      |
| Total Entertainment Expenses            |                  |         |      |

| Cash Flow: Income and Expenses (cont'd)   |                  |         |      |
|-------------------------------------------|------------------|---------|------|
|                                           | Monthly Expenses | Husband | Wife |
| Transportation/Auto Expenses              |                  |         |      |
| Gas                                       |                  |         |      |
| Oil/antifreeze                            |                  |         |      |
| Repairs/tires                             |                  |         |      |
| Car insurance                             |                  |         |      |
| Registration/fees                         |                  |         |      |
| Auto club                                 |                  |         |      |
| Parking                                   |                  |         |      |
| Taxi/train/bus/rentals                    |                  |         |      |
| Savings for new car                       |                  |         |      |
| <b>Total Transportation/Auto Expenses</b> |                  |         |      |
| Utilities                                 |                  |         |      |
| Gas and electric                          |                  |         |      |
| Water                                     |                  |         |      |
| Garbage                                   |                  |         |      |
| Cable TV                                  |                  |         |      |
| Cell phone/car phone                      |                  |         |      |
| Home phone/pager                          |                  |         |      |
| Other (specify):                          |                  |         |      |
| <b>Total Utilities Expenses</b>           |                  |         |      |

| Cash Flow: Income and Expenses (cont'd)                |                  |         |      |
|--------------------------------------------------------|------------------|---------|------|
|                                                        | Monthly Expenses | Husband | Wife |
| Incidentals                                            |                  |         |      |
| Pet care (food/veterinarian)                           |                  |         |      |
| Gifts (weddings, birthdays, holidays)                  |                  |         |      |
| Donations and charities                                |                  |         |      |
| Personal care (hair care/cosmetics/manicures/massages) |                  |         |      |
| Stationery (paper/postage/computer supplies)           |                  |         |      |
| Tobacco products                                       |                  |         |      |
| Bank service charges                                   |                  |         |      |
| Professional dues                                      |                  |         |      |
| Plants (florist/houseplants)                           |                  |         |      |
| Storage                                                |                  |         |      |
| Church/synagogue contributions (tithes)                |                  |         |      |
| Miscellaneous                                          |                  |         |      |
| specify                                                |                  |         |      |
| specify                                                |                  |         |      |
| specify                                                |                  |         |      |
| Total Incidentals Expenses                             |                  |         |      |

| Cash Flow: Income and Expenses (cont'd)                                                                                                            |                  |         |      |
|----------------------------------------------------------------------------------------------------------------------------------------------------|------------------|---------|------|
|                                                                                                                                                    | Monthly Expenses | Husband | Wife |
| School/Adult Education Expenses                                                                                                                    |                  |         |      |
| Tuition/fees/books                                                                                                                                 |                  |         |      |
| Transportation                                                                                                                                     |                  |         |      |
| Lunches                                                                                                                                            |                  |         |      |
| Total School/Adult Education Expenses                                                                                                              |                  |         |      |
| Laundry and Cleaning                                                                                                                               |                  |         |      |
| Drycleaning and laundry (clothes)                                                                                                                  |                  |         |      |
| Drycleaning and laundry (rugs, drapes, and furniture)                                                                                              |                  |         |      |
| Other (specify):                                                                                                                                   |                  |         |      |
| Total Laundry and Cleaning Expenses                                                                                                                |                  |         |      |
| Installment payments (Important: Include here only charged items not listed in other expense categories. Also note which party acquired the debt.) |                  |         |      |
| Creditor                                                                                                                                           |                  |         |      |
| Creditor                                                                                                                                           |                  |         |      |
| Creditor                                                                                                                                           |                  |         |      |
| Creditor                                                                                                                                           |                  |         |      |
| Total Installment Payments                                                                                                                         |                  |         |      |

| Cash Flow: Income and Expenses (cont'd)      |                  |         |      |
|----------------------------------------------|------------------|---------|------|
|                                              | Monthly Expenses | Husband | Wife |
| Other Expenses                               |                  |         |      |
| Estimated tax/income tax                     |                  |         |      |
| Tax preparation                              |                  |         |      |
| Nonreimbursed business expense               |                  |         |      |
| Alimony paid                                 |                  |         |      |
| Child support paid                           |                  |         |      |
| Legal/accounting (nonbusiness)               |                  |         |      |
| Savings and investments                      |                  |         |      |
| Support of relatives not living in your home |                  |         |      |
| Deductible paid for auto accident            |                  |         |      |
| Other (specify):                             |                  |         |      |
| Total Other Expenses                         |                  |         |      |



# What Will Happen to the House?

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|                                                                                                  |     |
|--------------------------------------------------------------------------------------------------|-----|
| Financial Versus Legal Realities .....                                                           | 191 |
| The House—Keep It, Transfer It, or Sell It? Now or Later? .....                                  | 192 |
| Steps Toward Settling the House.....                                                             | 192 |
| Step 1: What Is Your Total Housing Cost Per Month? .....                                         | 195 |
| Step 2: What Is the Current Fair Market Value<br>of Your House?.....                             | 200 |
| Step 3: What Is the Equity Value of Your House? .....                                            | 202 |
| Step 4: How Much Will It Cost to Sell the House? .....                                           | 204 |
| Step 5: What Is the Tax Basis for Your House? .....                                              | 207 |
| Step 6: What Will the Financial Value of Your House<br>Be If You Sell It With Your Spouse? ..... | 210 |
| Step 7: What Will the Financial Value of Your House<br>Be If You Sell It in the Future?.....     | 212 |
| Step 8: What Is Your Share of the House? .....                                                   | 217 |
| Step 9: What's Your Best Option Regarding the House? .....                                       | 218 |
| Step 10: How to Purchase the House From a<br>Spouse or Former Spouse .....                       | 222 |
| Questions to Ask Your Attorney or Financial Adviser .....                                        | 224 |

*If you're a homeowner, a divorce raises some difficult questions. Before making a decision, think through all the available options.*



If you and your spouse don't own a house, skip ahead to Chapter 14.

A home can represent the commitment to partnership between husband and wife, a place where the children grew up, and a refuge from the demands of life. Perhaps your house stands for a connection to the community—or to the future generations of your family to whom you had hoped to bequeath it.

Whatever your house has meant to you, you're threatened with its loss during divorce. But rather than thinking you will “lose” your house, consider at least four basic options available to you:

*Option A: Buy out your spouse's share and either keep it or sell it in the future.*

*Option B: Sell your share of the house to your spouse.*

*Option C: Sell the house together and split the proceeds with your spouse.*

*Option D: Continue to own the house jointly with your spouse and sell it in the future to your spouse or a third person.*

To ease your anxieties, it helps to look at the numbers to find the true value of your home so you can make an informed choice. In the following sections, we explain the financial factors you need to consider before choosing the best option.



The laws in your state and the circumstances of your particular case may affect your options regarding the house. For example, if you cannot reach an agreement concerning the house, judges may presume that a custodial parent will stay in the family home until the children reach maturity. In that case, you would not be able to sell the house and split the proceeds with your spouse (Option C). Rather, the custodial parent would have to buy out the other parent's interest, or possibly sell it some time in the future (Option A or D). If you are unsure of your state's laws regarding custody and the right to sell the house, consult with an attorney before completing the calculations in this chapter.



## Financial Versus Legal Realities

To understand your options better, consider home ownership from both legal and financial perspectives.

Suppose that during your marriage, you and your spouse bought a house using income earned from the marriage. You might assume that if you sell the house, the proceeds will be split 50-50. But the following table compares the legal and financial realities.

| <i><b>Legal Reality</b></i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <i><b>Financial Reality</b></i>                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>In the 41 states that follow the principles of equitable distribution, it's quite possible that the proceeds of the house won't be split down the middle. The 41 equitable distribution states are all the states except Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. (In Alaska, a married couple can elect to designate property as community property when it is within a trust. See Chapter 12 for a full discussion.) In equitable distribution states, judges are supposed to divide property "fairly." "Fair" doesn't necessarily mean "equal." In reality, "fair" could mean that one spouse receives a greater share of the proceeds.</p> | <p>If you and your spouse can reach your own settlement without going to court, you can each negotiate the best deal for yourself, rather than have a judge impose one on you. Rarely is anyone happy with the settlement a judge carves out. The judge won't factor in most financial consequences of keeping or giving up certain assets. A negotiated settlement, though not perfect, is usually more palatable..</p> |

## **The House—Keep It, Transfer It, or Sell It? Now or Later?**

If you've been in a house any length of time, you're probably accustomed to paying a set amount each month on your mortgage. Many people going through divorce simply focus on that monthly payment, which often looks lower than anything they would have to pay if they moved into an apartment or bought another home.

But looks are deceiving. A low or moderate monthly payment can keep you from seeing many of the other costs of owning a home. Suppose you do keep the house. First of all, a refinancing process may mean that your monthly payment increases, especially if you take cash out to buy out your spouse's share. In addition, will you be able to cover the cost of insurance, property taxes, repairs, cleaning, painting, and the like? What if you decide to sell it in a few years? Are you prepared to cover the costs of the sale alone? Can you afford to buy out your partner's share of the house and still have money to live on? Unless you know the true financial costs of keeping a home, you can't answer these questions.

## **Steps Toward Settling the House**

Again, here's a bit more about the most common scenarios for dealing with the family home at divorce.

### **Option A: Buy out your spouse's share and either keep it or sell it in the future.**

This option can hold the most unforeseen financial risks. Therefore, you'll want to take into consideration as many known factors as possible. You must determine whether you can afford your monthly housing costs. You also want to estimate how much you can expect to make if you sell the house, and recognize the tax implications of a future sale. And, you want to compare what you would receive if you and your spouse sold the house now. Of course, if you plan to keep the house for life, you don't need to worry about future sales costs or income taxes.

## A Tax Break on Capital Gains

The rules for determining the financial value of the family home were changed nearly a decade ago. Under the old rules, the house was not always such a great asset to take in a divorce settlement, because any profit realized from its sale could ultimately be eaten up in taxes. But now that equation has changed, and most homes can be sold without incurring capital gains taxes.

The key change, for purposes of this discussion, is that capital gains—such as profit from selling the house—are not taxable up to \$250,000.

Most capital gains that exceed \$250,000 are taxed at a maximum capital gain tax rate of 15%. But for some homeowners, gains between \$250,000 and \$500,000 are also tax-free. To qualify for the \$250,000 exclusion, you must have owned and occupied the residence for two of the five years prior to the sale or exchange of the house. (Even if you sell sooner than two years, you may be able to reduce or eliminate capital gains taxes on your profits under certain circumstances. Those exceptions would include being forced to sell the house for health reasons, a change in your place of employment, or because of “unforeseen circumstance.” The IRS defines the latter as war, man-made or natural disasters, losing your job, death of a spouse, and divorce or legal separation.)

If you are still married (or are remarried) when you sell the house, you and your spouse will owe no taxes on the first \$500,000 of gain if you file a joint tax return and:

- either spouse owned the house two of the last five years
- both spouses used the house two of the last five years, and
- neither spouse used the exclusion during the prior two years.

If you hold on to your house and sell it after remarrying, you may have to pay taxes on gains over \$250,000 if, for example, your new spouse doesn’t live in the house at least two years, or if your new spouse used the exclusion on the sale of a different house during the previous two years.

**Option B: Sell your share of the house to your spouse.**

To determine whether or not your spouse is making a good offer for your share of the house, you must understand its true financial value.

**Option C: Sell the house together and split the proceeds with your spouse.**

Before choosing this option, you need to know not only your current housing costs and equity value—you also need to know the costs of selling the house and the amount of profit you will realize after the taxes are paid.

**Option D: Continue to own the house jointly with your spouse and sell it in the future to your spouse or a third person.**

When a divorcing couple holds on to their house, it's usually either because a custodial parent is staying with the children or because the housing market is so weak that the couple doesn't want to sell the house yet. However, owning the house together can be emotionally and legally tricky. If you do it, make sure you have a written agreement ensuring that the out-of-house spouse's \$250,000 capital-gains exclusion is preserved. This agreement must be pursuant to a "divorce or separation instrument"—meaning a divorce judgment or a related document that discusses your arrangement about the home; a written separation agreement; or a decree requiring one spouse to make payments for the support or maintenance of the other.

If the agreement doesn't meet the strict requirements of the Internal Revenue Code, the out-of-house spouse could lose the exclusion. (See "A Tax Break on Capital Gains," above, for a general discussion of the capital-gains exclusion.) It is possible also to buy the house from your spouse in the future. But before making such an agreement, ask your tax adviser about the consequences.



Finding the true value of your house will take several calculations.

Follow the steps below to answer these questions:

1. What is your total housing cost per month?
2. What is the current fair market value of your house?
3. What is the legal equity value of your house?

4. How much will it cost to sell the house?
5. What is the tax basis for your house?
6. What would be the financial value (after-sale/after-tax value) of your house if you sold it with your spouse?
7. What would be the financial value (after-sale/after-tax value) of your house if you keep it now and sell in the future?
8. What is your ownership share of the house?
9. Can you afford to purchase the house from your spouse?
10. What is your best option regarding the house?



You may be tempted to skip certain steps, knowing that you favor one option over the others. Nevertheless, you are strongly advised to work through each step before making a decision. Completing all of the calculations will give you the most comprehensive picture of your financial choices—and can alert you to factors you may have overlooked.

## Step 1: What Is Your Total Housing Cost Per Month?

Your mortgage does not represent the entire amount you spend on housing. (And remember, if you refinance the house in order to raise cash to buy out your spouse, you're going to end up with a larger loan and probably bigger monthly payments.) You must also consider costs like your utilities and maintenance to get a true picture of expenses.

Use these steps to find your net monthly housing costs:

- a. List your monthly housing costs.
- b. Total your gross monthly housing costs.
- c. Find your net monthly housing costs by subtracting tax savings from your gross monthly housing costs.

## List Your Monthly Housing Costs

List the amount you pay each month for the items on the *Monthly Housing Costs* chart that follows. You already have this information on the *Cash Flow Statement* you completed in Chapter 12. If you don't know the monthly cost of an item, or if you don't incur an expense every month, estimate the amount you spend per year and divide by 12. To estimate what you'll spend on significant repairs and maintenance needs, look around the house

and note any major work that needs to be done. Check previous invoices to get an idea of what you'd normally spend on these expenses—or call a plumber, electrician, or whomever else you may need for an estimate.

| <b>Monthly Housing Costs</b>             |                                  |
|------------------------------------------|----------------------------------|
| <b><i>Item</i></b>                       | <b><i>Your Monthly Costs</i></b> |
| Mortgage                                 | \$                               |
| Second mortgage (or equity loan payment) | \$                               |
| Property taxes                           | \$                               |
| Maintenance                              |                                  |
| General repairs & painting               | \$                               |
| Lawn/garden service & supplies           | \$                               |
| Pool care                                | \$                               |
| Housecleaning                            | \$                               |
| Pest control                             | \$                               |
| Homeowner's Association fees             | \$                               |
| Other                                    | \$                               |
| Total Maintenance                        | \$                               |
| Insurance                                | \$                               |
| Utilities                                | \$                               |
| Major repairs                            | \$                               |
| Total Gross Housing Costs Per Month      | \$                               |

As this chart reveals, the price of owning and maintaining your house is higher than your monthly mortgage alone. Even if certain expenses aren't being incurred now—or haven't been for a while—do not be lulled into thinking they no longer exist.

This chart includes the cost of repairs because those repairs will be your sole responsibility if you opt to keep the house. You may be able to get your spouse to split immediate repair costs with you when you negotiate the settlement. But because you don't know for sure that your spouse will agree, figure that you will have to come up with the money yourself.

### Total Your Gross Monthly Housing Costs

Once you have filled in the information on the *Monthly Housing Costs* chart, add up all of the items in *Your Monthly Costs* column. That figure is your gross monthly housing costs. Write that amount here.

\$ \_\_\_\_\_ *Gross Monthly Housing Costs*

### Find Your Net Monthly Housing Costs

In considering your monthly housing costs, you should not overlook the tax benefits of home ownership. Under current tax laws, you can deduct your mortgage interest payment and the property taxes you've paid, so your actual housing costs may be *lower* than the sum of your gross monthly housing costs. At the end of each year, you'll receive a Form 1099 from the bank or lender who holds your mortgage showing how much you paid in mortgage interest during the year.

If you take out a loan to purchase your spouse's share of the house, interest on that loan won't be deductible unless you use the house as collateral, you are legally liable for repayment, and the mortgage or deed of trust is recorded. Thus, interest on an informal loan from parents or friends may not be deductible, unless you give the lender a secured note and record it.

In addition, you may be able to deduct points (prepaid interest) in the year you purchase a home if you take out a mortgage to buy it. However, points are not deductible if you refinance your house to buy out your spouse's interest. Points on loans for home improvements are deductible in the year in which the loan is taken out. If you refinance the mortgage on your house, your deductions for the points are spread out over the life of the new loan. Additionally, any prepayment penalty you incur because you refinance the mortgage is deductible as interest in the year paid. Any points not previously deducted can be deducted as interest in the year of the refinancing.

To calculate your tax savings, follow these instructions:

- a. Add the total amount of interest paid on your mortgage during the year to the amount you paid in property taxes.
- b. Multiply that number by your tax bracket—we assume a 28% federal tax bracket. (Don't forget your state tax bracket if your state allows a deduction for mortgage interest.)
- c. Divide this calculation by 12 to get a monthly average.
- d. Subtract the monthly average from your gross monthly housing costs to get your net housing costs.

Although the result may not be the exact amount you can deduct, you'll get a pretty close estimate for your housing costs. For precise figures, consult your accountant or tax adviser. The example and step-by-step formula that follow will make it easier for you to find your net monthly housing costs.

**EXAMPLE:** Mitch and Candy's house is worth \$150,000. Their mortgage is \$1,200 per month (\$14,400 per year), and they pay \$272 a month (\$3,264 per year) on a second mortgage. Their annual mortgage payments are \$17,664 (\$14,400 + \$3,264); \$14,000 of those payments is interest. They pay property taxes of \$2,250 a year. Their federal tax bracket is 28%, giving them an annual tax savings of \$4,550 or \$379 a month. Assume their gross monthly housing costs equal \$2,502.

|                             |        |          |
|-----------------------------|--------|----------|
| Mortgage Interest           |        | \$14,000 |
| Property Taxes              | +      | 2,250    |
| Deduction                   | =      | 16,250   |
| Tax Bracket                 | x      | .25      |
| Tax Savings                 | =      | 4,062    |
| Monthly Tax Savings         | ÷ 12 = | 339      |
|                             |        |          |
| Gross Monthly Housing Costs |        | \$2,502  |
| Monthly Tax Savings         | –      | 339      |
| Net Monthly Housing Costs   | =      | \$2,163  |



To apply this formula to your situation, fill in the blanks below. You will need to know your annual mortgage interest, annual property taxes, and tax bracket.

\$ \_\_\_\_\_ *Annual mortgage interest*

To find your mortgage interest, contact your lender and request a calculation of the annual mortgage interest on your loan. Or, ask the lender for the amortization schedule for your loan. On either document, you will see a monthly listing of how much of the mortgage payment repays principal (your debt or balance due) and how much pays interest on the loan.

\$ \_\_\_\_\_ *Annual property taxes*

To find your property taxes, refer to your federal tax returns, call the county tax assessor, or call your lender if your property taxes are paid through an escrow account with your lender. You can subtract taxes assessed for street, sidewalk, utility, curb, sewer, and other property improvements.

Some high-income taxpayers must reduce their annual mortgage interest and property taxes by the lesser of 3% of their adjusted gross income over a certain amount or 80% of the amount of the itemized deductions otherwise allowed for the year. (Internal Revenue Code § 68.) Your tax preparer can help you make the calculation.

\_\_\_\_\_ *% Tax bracket*

To find your tax bracket, check the income tax schedules contained in the IRS tax packet or ask a tax adviser to verify your current tax bracket. Or simply use 25%, the federal tax bracket into which most people fall. Remember to use only your anticipated income as a single person, including any alimony you might receive or pay, as the basis for your tax bracket. And your filing status will be either “single” or “head of household.” (For help in figuring out which category to use, see Chapter 11.)

Now enter those numbers in the *Net Monthly Housing Costs* chart. Using the formula in the chart, calculate your net monthly housing costs. You will refer to this number later when making your decision on what to do with the house.

| Net Monthly Housing Costs   |                           |    |
|-----------------------------|---------------------------|----|
| Annual Mortgage Interest*   | =                         | \$ |
| Annual Property Taxes*      | +                         | \$ |
| Deduction**                 | =                         | \$ |
| Tax Bracket                 | x                         |    |
| Tax Savings                 | =                         | \$ |
| Monthly Tax Savings         | ÷ 12 =                    | \$ |
| Gross Monthly Housing Costs |                           | \$ |
| Monthly Tax Savings         | –                         | \$ |
| Net Monthly Housing Costs   | =                         | \$ |
| \$                          | Net Monthly Housing Costs |    |

\* Some high-income taxpayers may not be able to fully deduct mortgage interest and property tax payments. See section on annual property taxes, above.

\*\* Remember: Your interest and therefore your interest deduction may be higher if you refinance to get the money to buy your spouse's share of the house. Ask yourself: "Can I afford to keep the house if I include the additional costs of buying out my spouse?"

## Step 2: What Is the Current Fair Market Value of Your House?

The current "fair market value" of your house is the amount you can realistically expect to get when you list your house for sale on the open market. You can obtain fair market value estimates from real estate agents free of charge. You might want to ask the agent who helped you buy the house originally, or an agent who consistently markets in your neighborhood.

You can also get estimates of fair market value from a certified appraiser, but be prepared to pay. For a referral to a certified appraiser, ask your banker or lender or contact the Appraisal Institute at 550 West Van Buren St., Suite 1000, Chicago, IL 60607; 312-335-4100; [www.appraisalinstitute.org](http://www.appraisalinstitute.org). If you and your spouse cannot agree on the value of the house, ask your attorney to select an appraiser. This person will testify to the house's value if the issue is contested in court.

Real estate appraisers generally look at a house from several financial angles and take an average of these values to estimate what it is worth. The two primary views they take are:

- what the market will bear—that is, the sales prices of comparable houses in the area, and
- your house's replacement value (the cost of building materials and the like).



General real estate sites that may be helpful in determining your home's value:

**[www.dataquick.com](http://www.dataquick.com)**. Offers detailed information to help you compare sales prices for many areas of the country based on information from county recorders' offices and property assessors.

**[www.realtor.com](http://www.realtor.com)**. Can help you find a home or neighborhood, learn about lenders, make calculations, compile checklists, and locate real estate reference materials.

**[www.realtylocator.com](http://www.realtylocator.com)**. Provides more than 100,000 real estate links nationwide, including property listings, real estate agents, neighborhood data, real estate news, and other information resources.

Once you have a good estimate of the fair market value of your house, write it here:

\$ \_\_\_\_\_ *Fair market value*

### Think Like a Buyer

Before paying for an appraiser, you might ask a real estate agent who regularly markets your neighborhood to prepare a comparative market analysis (CMA). This is typically provided at no charge.

After physically inspecting your house, the agent researches the market for recent sales, how long property takes to sell, currently listed homes, pending sales, and expired listings (unsold homes taken off the market).

Don't hesitate to ask more than one agent to provide you with a CMA. In addition to getting a consensus about what your home is worth, you will also learn about the quality of agents with whom you may do business later.

In valuing your house, think like a buyer, not a seller. Specifically, do not rely on the following as an indicator of a sales price for your home:

- the amount you spent on improvements (you may have spent more than the home prices in your neighborhood will support)
- the price you paid for your home; markets are dynamic and the market value of your home may have gone up or down since you purchased it, or
- the assessed value shown on your property tax statement—these values rarely reflect the actual market value.

### Step 3: What Is the Equity Value of Your House?

The equity value of your house is its fair market value (the figure you obtained in step 2) minus whatever debt you have connected to your house. Remember—if a court were to calculate each spouse's share of a house, the court would consider only the amount of equity. That number, however, does not reflect the sale costs or taxes—that is, the financial reality of owning or selling a house.

The debt connected to your house equals what you owe to any lenders (first mortgage, second mortgage, or home equity loan or line of credit) plus any liabilities on the house. All liabilities must be paid before any cash disbursements can be made from the sale of a house. Liabilities include income or property tax liens, child support liens, judgment liens (if someone

sues you and obtains a judgment, that person can put a lien on your house), or mechanic's or materialman's liens placed by a contractor who did work on your home but who wasn't paid.

Ask your lender for the balance on your mortgages and equity loans. The lender should offer you two figures—a principal balance and a payoff balance. The principal balance is simply the amount of principal remaining to be paid on your loan. The payoff balance is the principal balance plus an additional month's interest and any prepayment charges you must pay to close out the loan. Use the payoff balance in calculating the debt on your house.

You may not be aware of all liens on your property. Tax liens and mechanic's liens, for example, often appear without the owner's knowledge. To find all liens on your house, you'll have to do a title search. You can hire a title insurance company to conduct the search, or you can visit the records office in the county where your deed is recorded. A clerk in that office can show you how to search for any liens on your house.

| Possible Debts Against Your House     |    |    |
|---------------------------------------|----|----|
| Mortgage balance                      | \$ |    |
| Second mortgage balance               | \$ |    |
| Equity loan or line of credit balance | \$ |    |
| Property tax lien                     | \$ |    |
| Income tax lien                       | \$ |    |
| Child support lien                    | \$ |    |
| Judgment lien                         | \$ |    |
| Mechanic's or materialman's lien      | \$ |    |
| Other liens                           | \$ |    |
| Total Current Debt on House           | =  | \$ |

Now subtract the debt on the house from its fair market value to obtain the equity value.

|                                                        |            |
|--------------------------------------------------------|------------|
| <i>Fair Market Value (step 2)</i>                      | \$ _____   |
| <i>Total Current Debt on House<br/>(step 3, above)</i> | – \$ _____ |
| <i>Equity Value of Your House</i>                      | = \$ _____ |

## Step 4: How Much Will It Cost to Sell the House?

To determine how much money it will take to actually sell your house, you can do a quick ballpark estimate, or you can use the calculations that follow to find a more precise figure. To find a precise figure, you'll have to include not only the costs of sale, but also the amount it will take to fix up the house and prepare it for sale.

### Quick Ballpark Estimate of Cost of Sale

Take the fair market value figure you determined in step 2. To get a ballpark amount for the sales cost, multiply that amount by .07. Obviously, some sales will yield higher or lower costs of sale, but 7% will do for a rough estimate. Enter that number in the total cost of sale blank, below.

### Precise Valuation of Cost of Sale

To obtain a more accurate cost of sale figure, you need to total the following amounts:

\$ \_\_\_\_\_ *Agent's commission*

This represents the amount a real estate agent charges you for selling a house. Generally, it's set at 6% of the final selling price. The fee can sometimes be negotiated down. Also, if you list your house as a "FSBO"—for sale by owner—you avoid the agent's commission altogether. But be sure to educate yourself about the process before you list your house as a FSBO. You can find information on the topic at [www.nolo.com](http://www.nolo.com) in the "Property and Money" section of the website. If you live in California, check out *For Sale By Owner in California*, by George Devine (Nolo).

\$ \_\_\_\_\_ *Closing costs*

These costs can include escrow fees, abstract and recording costs, appraisal fees, surveys, title insurance, transfer and stamp taxes, loan charges, and miscellaneous expenses. All this can add up to several thousands of dollars. A lender or real estate agent can help you figure the exact amount.

\$ \_\_\_\_\_ *Attorney's fees*

In a few states, you will need to hire an attorney to help you “close” the sale of your house. If you used an attorney when you bought the house, the cost should be similar, though you may need to adjust it upward to account for inflation and the passage of time. Otherwise, ask a real estate agent for an estimate.

\$ \_\_\_\_\_ *Fix-up costs*

Fix-up expenses are not considered when calculating capital gains, but they are a very real expense when selling a home. Estimate here the amount of money you will have to spend to prepare your house for sale. Does it need major repairs or just a paint job? Does the foundation, roof, or plumbing need work? Will you need to have the house inspected? Must you get a termite inspection? (If you need help in getting a handle on what repairs are necessary, the American Society of Home Inspectors' website at [www.ashi.com](http://www.ashi.com) provides a list of inspectors near you, or you can ask your realtor for referrals.)

\$ \_\_\_\_\_ *Total cost of sale*

Add these amounts together to get a reasonably close estimate of what it will cost to sell your house.

### **What Happens When the House Secures a Spouse's Separate Property Debt?**

Generally, a spouse should not keep a house that secures the debts of a soon-to-be-former spouse. Before agreeing to keep a house securing your spouse's separate property debt, be certain your spouse has paid all such debts, and request proof of payment.

A California case underscores the point. The husband forged his wife's signature on a quitclaim deed (giving him sole ownership) and then used the house as security while running up additional debts. His creditors got a judgment against him and attached a lien to the house. At the divorce trial, the court ordered the husband to pay the judgment. The wife chose to keep the house and buy out his share. In calculating the value of the house, however, the court did not reduce it by the amount of the lien. Thus, the wife had to pay the husband one-half of the value of the house—and also pay off the lien plus interest.

Moral of this story: Once a lien, always a lien—until the creditor is paid. A creditor's right to payment is not affected by who is ordered to pay marital debt in divorce. If you want to keep the house, deduct all liens, plus interest, when calculating the value. If your spouse refuses, don't keep the house.

If you decide to sell the house together, make sure that all separate property debts secured by the house are identified as separate property. Instruct the escrow company to pay debts incurred separately by one spouse out of that spouse's share of the proceeds. For instance, if the net sale proceeds total \$100,000 after costs of sale, each spouse is entitled to \$50,000. However, if there is a separate property lien of \$25,000 against one spouse, the escrow company should issue checks as follows: \$50,000 to the spouse without the separate property debt, \$25,000 to the spouse with the separate property debt, and \$25,000 to the creditor.



## Step 5: What Is the Tax Basis for Your House?

The tax basis of an asset is a little-mentioned financial concept no one thinks about until it's time to sell the asset—or until a divorce.

The tax basis is the dollar amount the IRS uses to determine whether you've made or lost money on an asset. Essentially, your tax basis is the original purchase price plus the cost of any improvements you have made, minus any tax benefits you have realized. Knowing the tax basis lets you calculate your profit to determine whether you'll owe taxes when your house is sold during or after divorce. If the house isn't sold until after the divorce, the person who gets the house gets the tax liability.

To figure your tax basis, enter the appropriate amounts in the blanks below.

\$ \_\_\_\_\_ *Purchase price*

The purchase price should be on the original purchase contract or closing statement—check your home bookkeeping files or a safe deposit box. If you still can't find it, call your lender or the escrow company that processed your purchase.

(If you acquired the house prior to May 6, 1997, check to see whether you filed IRS Form 2119 with your tax return. The "Adjusted Basis of the New House" shown on the form is equal to the purchase price plus the acquisition costs. If you used Form 2119, you don't need to add in the acquisition costs below.)

\$ \_\_\_\_\_ *Acquisition costs*

These are costs associated with the purchase, such as recording fees, title insurance, and document fees listed on the escrow statement. Do not include loan principal, interest, or points.

\$ \_\_\_\_\_ *Capital improvements*

Capital improvements are items that add value to your house, such as a new bathroom or den you've added, a security system you've installed, or extensive landscaping you've done. The costs of these changes are not fix-up or repair costs. You will need to go through your files to find receipts that document the improvements made to your house.

The following are examples of capital improvements:

- Additions
  - ✓ bedroom
  - ✓ bathroom
  - ✓ deck
  - ✓ garage
  - ✓ porch
  - ✓ patio
  - ✓ storage shed
  - ✓ fireplace
- Lawns and grounds
  - ✓ landscaping
  - ✓ driveway
  - ✓ walkway
  - ✓ fence
  - ✓ retaining wall
  - ✓ sprinkler system
  - ✓ swimming pool
  - ✓ exterior lighting
- Communications
  - ✓ satellite dish
  - ✓ intercom
  - ✓ security system
- Heating and air conditioning
  - ✓ heating system
  - ✓ central air conditioning
  - ✓ furnace
  - ✓ duct work
  - ✓ central humidifier
  - ✓ filtration system
- Electrical
  - ✓ light fixtures
  - ✓ wiring upgrades
- Plumbing
  - ✓ water heater
  - ✓ soft water system
  - ✓ filtration system

- Insulation
  - ✓ attic
  - ✓ walls
  - ✓ floors
  - ✓ pipes and duct work
- Interior improvements
  - ✓ built-in appliances
  - ✓ kitchen modernization
  - ✓ bathroom modernization
  - ✓ flooring
  - ✓ wall-to-wall carpet
- Miscellaneous
  - ✓ storm windows and doors
  - ✓ roof
  - ✓ central vacuum system.

\$ \_\_\_\_\_ Total Improvements

Tax benefits refer to the rollover of gain (profit) from homes sold up to August 5, 1999 as well as deductions taken for a home office. To find your tax benefits, refer to your tax returns or call your accountant. *For simplicity's sake, you can calculate the tax basis without subtracting any tax benefits.*

Use the figures you entered earlier in this section to find the tax basis of your house.

Purchase Price \$ \_\_\_\_\_

Acquisition Costs

(Do not include Fix-up Costs) + \$ \_\_\_\_\_

Rollover Tax Benefits - \$ \_\_\_\_\_

Capital Improvements + \$ \_\_\_\_\_

Tax Basis of House\* = \$ \_\_\_\_\_

\*If you have Form 2119, you can use the Adjusted Basis for this figure if you add capital improvements.

\$ \_\_\_\_\_ Tax Benefits

### For Those With Home Office Depreciation After May 6, 1997

Claiming a tax deduction for use of a home office is a growing trend. However, the law allowing you to exclude \$250,000 of gain (profit) on the sale of a house does not include the amount attributed to depreciation for home office use. So if you depreciate your house for home office use, the amount of depreciation will be taxed as a capital gain (25%).

The following formula allows you to figure the amount not qualifying for the exclusion:

|                                                        |            |
|--------------------------------------------------------|------------|
| Total home office depreciation taken since May 6, 1997 | = \$ _____ |
| x 25% capital gains rate                               | x .25      |
| Taxes not qualifying for exclusion                     | = \$ _____ |

### Step 6: What Will the Financial Value of Your House Be If You Sell It With Your Spouse?

If you profit from the sale of a house, you may exclude up to \$250,000 (\$500,000 if you file a joint return) of that profit every 24 months. You must consider this exclusion in order to figure out the financial value (after-sale/after-tax value) of your house and analyze your future options concerning house purchases and tax deferrals. Remember, too, that you will need to know your capital gains rate to determine the financial value of the house. As a general rule, if you are in the 25% tax bracket your capital gains rate is 15%, and if you're in the 15% bracket, your capital gains rate is 5%. (Don't forget that you may owe state taxes as well.)

To find the financial value (after-sale/after-tax value) of your house, enter the following information from the previous steps:

\$ \_\_\_\_\_ *Fair Market Value (from Step 2)*

\$ \_\_\_\_\_ *Current Debt (from Step 3)*

\$ \_\_\_\_\_ *Cost of Sale (from Step 4)*

\$ \_\_\_\_\_ *Fix-up Expenses (from Step 4)*

\$ \_\_\_\_\_ *Tax Basis of the House (from Step 5)*

\$ \_\_\_\_\_ *Taxes to Pay From Home Office Use (from Step 5)*

\_\_\_\_\_ *% Capital Gains Rate (including state)*

Now take the following steps:

1. Find the amount realized by subtracting the cost of sale from the fair market value.
2. Find the gain or loss on the potential sale by subtracting the tax basis from the amount realized. If you had a loss, use zero as the amount of gain and go directly to Step 5.
3. Find the taxable gain by subtracting your exclusion from the gain. (Taxable gain is that portion of gain exceeding the maximum gain you can exclude.) The maximum exclusion is \$250,000 for individuals and \$500,000 for many married couples filing jointly. The net gain is the portion of the gain that will be taxed. If your net gain does not exceed the maximum exclusion allowed, go directly to Step 5.
4. Find the taxes on the taxable gain by multiplying the taxable gain by the capital gains rate.
5. Find the financial value by subtracting the current debt on the house, taxes on taxable gain, cost of sale, fix-up expenses, and taxes on home office use from the amount realized.

#### EXAMPLE:

1. Find the amount realized:

|                          | <i>Your House</i> | <i>Example</i>   |
|--------------------------|-------------------|------------------|
| <i>Fair Market Value</i> | _____             | <i>\$400,000</i> |
| <i>Cost of Sale</i>      | _____             | <i>\$ 28,000</i> |
| <i>Amount Realized</i>   | _____             | <i>\$372,000</i> |

## 2. Find the gain or loss

|                        | <i>Your House</i> | <i>Example</i> |
|------------------------|-------------------|----------------|
| <i>Amount Realized</i> | _____             | \$372,000      |
| <i>Less Tax Basis</i>  | _____             | \$100,000      |
| <i>Gain (or Loss)</i>  | _____             | \$272,000      |

## 3. Find the taxable gain

|                     |       |           |
|---------------------|-------|-----------|
| <i>Gain</i>         | _____ | \$272,000 |
| <i>Exclusion</i>    | _____ | \$500,000 |
| <i>Taxable Gain</i> | _____ | \$ 0      |

## 4. Find the taxes on taxable gain

|                               |       |       |
|-------------------------------|-------|-------|
| <i>Taxable Gain</i>           | _____ | \$0   |
| <i>Capital Gains Rate</i>     | _____ | x 15% |
| <i>Taxes on Taxable Gains</i> | _____ | \$0   |

## 5. Find the Financial Value

|                                 |       |           |
|---------------------------------|-------|-----------|
| <i>Amount Realized</i>          | _____ | \$372,000 |
| <i>Current Debt on House</i>    | _____ | \$ 90,000 |
| <i>Taxes on Taxable Gain</i>    | _____ | \$0       |
| <i>Taxes on Home Office Use</i> | _____ | \$0       |
| <i>Fix-Up Expenses</i>          | _____ | \$ 6,000  |
| <i>Financial Value</i>          | _____ | \$276,000 |

## Step 7: What Will the Financial Value of Your House Be If You Sell It in the Future?

Of all the options you may pursue regarding the house, the choice of selling it in the future can be the most difficult to analyze. Take your time and get help in determining real estate values, if necessary.

No one can predict what will happen in the future to the real estate market or tax laws. But real estate brokers can make calculated guesses about it. Based on the assumption that you would not keep a house that is expected to decrease in value, you can anticipate that the house value will stay the same or, more likely, increase.

But increase by how much?

A technical aid, the *Future Value Factor* table, lets you calculate changes in the value of an asset like a house. We've included a *Future Value Factor* table in the appendix. Use it, along with the formula below, to get an idea of what your house will be worth in the future. But remember that this will be only an estimate.

To use the *Future Value Factor* chart, you must decide how long you plan to stay in your house (called the holding period), and you must select a rate of inflation. Financial planners often figure an annual inflation rate of 3% or 4% when estimating housing values. Depending on the state of the economy and your local housing market, you may be tempted to use an inflation rate higher than 3% or 4%. Certainly many houses increase in value at a rate substantially higher than the inflation rate. Nevertheless, we recommend that you be conservative when speculating on the future value of your house. It's better to expect less and get more than vice versa.

You will see that the *Future Value Factor* chart lists numbers of years vertically and rates of inflation horizontally. Estimate the number of years you expect to hold onto the house, select an anticipated inflation rate and find where the selected row and column intersect. That will give you the future value factor. For example, if you expect to hold the house another seven years and assume inflation won't go above 4% during that period, your future value factor is 1.3159.

To find the future financial value (after-sale/after-tax value), enter the following information for your house:

\_\_\_\_\_ % Inflation (rate you anticipate)

\_\_\_\_\_ Holding Period (how many years you plan to keep the house)

\_\_\_\_\_ Future Value Factor (from Appendix, Section F)

\$ \_\_\_\_\_ Fair Market Value (Step 2)

\$ \_\_\_\_\_ Current Debt on House (Step 3)

\$ \_\_\_\_\_ *Cost of Sale (Step 4)*

\$ \_\_\_\_\_ *Fix-Up Expenses (Step 4)*

\$ \_\_\_\_\_ *Tax Basis (Step 5)*

\_\_\_\_\_ % *Capital Gains Rate (Use the state rate. Virtually all states follow the federal law for exclusion regarding the house, but many have their own capital gains rules.)*

\$ \_\_\_\_\_ *Taxes to Pay From Home Office Use (see "For Those With Home Office Depreciation After May 6, 1997," above)*

Now take the following steps:

1. Find the future value factor (Appendix, Section F) by estimating the holding period and the rate of inflation.
2. Find the future sale value by multiplying the fair market value by the future value factor.
3. Find the potential amount realized by subtracting the cost of sale from the future sale value.
4. Find the potential gain or loss on the potential sale of your house by subtracting the tax basis from the amount realized. If you had a loss, use zero as the amount of gain and go directly to Step 7.
5. Find the potential taxable gain by subtracting your exclusion from the gain. Taxable gain is that portion of gain exceeding the maximum gain you can exclude. If you are single, the maximum gain you can exclude is \$250,000. (Remember: To qualify for the exclusion, you must own and reside in the home for two of the last five years prior to sale, and you must not have sold or exchanged a principal residence in the two years prior to the sale.) If your taxable gain does not exceed the maximum exclusion allowed you, go directly to Step 7.
6. Find the taxes on the taxable gain by multiplying the taxable gain by your capital gains rate.



7. Find the financial value (after-sale/after-tax value) by subtracting what you expect your debt on the house will be, as well as taxes on taxable gain, cost of sale, fix-up expenses, and taxes on home office use, from the amount realized calculated in Step 3.

**EXAMPLE:**

1. Find the Future Value Factor—See Appendix, Section F.  
*For the purpose of this example, assume a Holding Period of five years and an Inflation Rate of 5%—the Future Value Factor is 1.2763.*

2. Find the Future Sale Value

|                            |                    |
|----------------------------|--------------------|
| <i>Fair Market Value</i>   | <i>\$400,000</i>   |
| <i>Future Value Factor</i> | <i>x 1.2763</i>    |
| <i>Future Sale Value</i>   | <i>= \$510,520</i> |

3. Find Potential Amount Realized

|                                  |                    |
|----------------------------------|--------------------|
| <i>Future Sale Value</i>         | <i>\$510,520</i>   |
| <i>Cost of Sale</i>              | <i>– 35,736</i>    |
| <i>Potential Amount Realized</i> | <i>= \$474,784</i> |

4. Find Potential Gain or Loss

|                        |                    |
|------------------------|--------------------|
| <i>Amount Realized</i> | <i>\$474,484</i>   |
| <i>Less Tax Basis</i>  | <i>– 100,000</i>   |
| <i>Gain (or Loss)</i>  | <i>= \$374,784</i> |

5. Find the Potential Taxable Gain

|                               |                    |
|-------------------------------|--------------------|
| <i>Gain</i>                   | <i>\$374,784</i>   |
| <i>Exclusion</i>              | <i>– 250,000</i>   |
| <i>Potential Taxable Gain</i> | <i>= \$124,784</i> |

6. Find the Potential Taxes on Taxable Gain

|                                        |                   |
|----------------------------------------|-------------------|
| <i>Taxable Gain</i>                    | <i>\$124,784</i>  |
| <i>Capital Gains Rate</i>              | <i>x 15%</i>      |
| <i>Potential Taxes on Taxable Gain</i> | <i>= \$18,717</i> |

## 7. Find the Future Financial Value

|                                  |                    |
|----------------------------------|--------------------|
| <i>Amount Realized</i>           | <i>\$474,784</i>   |
| <i>Anticipated Debt on House</i> | <i>– 90,000</i>    |
| <i>Taxes on Taxable Gain</i>     | <i>– 18,717</i>    |
| <i>Taxes on Home Office Use</i>  | <i>– 0</i>         |
| <i>Fix-Up Expenses</i>           | <i>– 6,000</i>     |
| <i>Potential Financial Value</i> | <i>= \$360,367</i> |

Now fill in the numbers for your house.

## 1. Find the Future Value Factor

*Enter number from Appendix,  
Section F:*

\_\_\_\_\_

## 2. Find the Future Sale Value

|                            |         |
|----------------------------|---------|
| <i>Fair Market Value</i>   | _____   |
| <i>Future Value Factor</i> | x _____ |
| <i>Future Sale Value</i>   | = _____ |

## 3. Find Potential Amount Realized

|                                  |         |
|----------------------------------|---------|
| <i>Fair Market Value</i>         | _____   |
| <i>Cost of Sale</i>              | – _____ |
| <i>Potential Amount Realized</i> | = _____ |

## 4. Find Potential Gain or Loss

|                        |         |
|------------------------|---------|
| <i>Amount Realized</i> | _____   |
| <i>Less Tax Basis</i>  | – _____ |
| <i>Gain (or Loss)</i>  | = _____ |

## 5. Find the Potential Taxable Gain

|                               |            |
|-------------------------------|------------|
| <i>Gain</i>                   | _____      |
| <i>Exclusion</i>              | – _____    |
| <i>Potential Taxable Gain</i> | = \$ _____ |

## 6. Find the Potential Taxes on Taxable Gain

|                                        |       |       |
|----------------------------------------|-------|-------|
| <i>Taxable Gain</i>                    | _____ |       |
| <i>Capital Gains Rate</i>              | x 15% |       |
| <i>Potential Taxes on Taxable Gain</i> | =     | _____ |

## 7. Find the Future Financial Value

|                                  |       |       |
|----------------------------------|-------|-------|
| <i>Amount Realized</i>           | _____ |       |
| <i>Anticipated Debt on House</i> | –     | _____ |
| <i>Taxes on Taxable Gain</i>     | –     | _____ |
| <i>Taxes on Home Office Use</i>  | –     | _____ |
| <i>Fix-Up Expenses</i>           | –     | _____ |
| <i>Potential Financial Value</i> | =     | _____ |

## Step 8: What Is Your Share of the House?

You may have expected your marriage to be a 50-50 proposition, and you may believe that your divorce will be the same—a simple division in which each person gets half. When it comes to the house, however, those percentages may not hold up.

In this step, you must determine what share of the house belongs to you. You will use that amount in choosing your best option regarding the house and in negotiating the final settlement. When you determine the total value of the house under different scenarios, you need to know your share so you can figure out how much of that total value you can expect to receive. For instance, if the total value of your house is \$100,000 and you are each entitled to 50% of it, you'd get \$50,000. But if you were only a one-fourth owner of that house, you'd be entitled to \$25,000, not \$50,000.

The laws of your state and the origin of the money used to buy your house determine the amount of your share. Refer to Chapter 12 for an overview of marital and separate property. If one spouse was the sole owner of the house when you entered the marriage, the other spouse may nevertheless be entitled to a share at divorce. In some community property states, when the nonowning spouse or the marital earnings pay for mortgage payments and improvements (such as additions and renovations), that action usually gives the nonowner some ownership interest.

In equitable distribution states, if a house is one spouse's separate property but the nonowner spouse uses her *own* separate-property funds to make improvements to it, the nonowner spouse may acquire a monetary interest in the improved property. That interest might equal the value of the improvements or the increase in the property's overall value.

Once you have determined your estimated ownership share, enter it here.

\$ \_\_\_\_\_ % *Separate Property*

\$ \_\_\_\_\_ % *Marital Property*

Your house can be worth different amounts under different circumstances, depending on your ownership share and the option you ultimately choose. Multiply the percentage of marital property by the equity or legal value and place that figure on the *Marital Balance Sheet* in Chapter 19. Then, using the same process, figure out the amount of the home that is separate property and place that in the *Marital Balance Sheet*, noting that that separate-property share must be bought out as part of the ultimate negotiations.

## Step 9: What's Your Best Option Regarding the House?

Now consider your options in light of your calculations in the previous steps. The advantages and disadvantages of each option are recapped below. If you choose Option A or B and do not think you can afford to buy out your spouse's interest, see the suggestions in Step 10, below.

### **Option A: Buy out your spouse's share and either keep it or sell it in the future.**

**Advantages:** For the sake of children, or stability in your own life, it may serve you to keep the family home. You can take advantage of the IRS exclusion that lets you sell a house and not pay taxes on the first \$250,000 of profit.

**Disadvantages:** When you eventually sell the house, you will be solely responsible for costs of sale and for taxes on the profit over \$250,000. There

is also a chance that the real estate market in your area could crash and that the house could sell for less money in the future.

*Is this a viable option for me? \_\_\_\_ Yes \_\_\_\_ No*

### **Option B: Transfer your share of the house to your spouse.**

**Advantages:** You do not have to pay taxes on the money you receive because the IRS does not tax money received as a property buyout during a divorce.

**Disadvantages:** You may not earn enough on the sale of the house to afford to buy a new one. If your income is not high enough, you may not qualify for financing.

*Is this a viable option for me? \_\_\_\_ Yes \_\_\_\_ No*

### **Option C: Sell the house together and split the proceeds with your spouse.**

**Advantages:** You share the cost of sale and the tax liability with your spouse. Also, you can each take advantage of the IRS provision that lets you exclude up to \$250,000 of gain on the sale of the house (\$500,000 if you've remarried and meet certain conditions; see "A Tax Break on Capital Gains," above).

**Disadvantages:** You'd be selling the family home, to which you may have strong emotional ties. Further, the amount you receive from the sale of the house may not be enough for you to afford to buy another house, or you may not qualify for financing to buy another home.

*Is this a viable option for me? \_\_\_\_ Yes \_\_\_\_ No*



If you sell the house to a third person during the calendar year before the year in which your divorce is final, and taxes are due on the sale, consider filing taxes using a "married filing separately" taxpayer status. Otherwise, you could be responsible for your spouse's liability if your spouse is dishonest with the IRS (see Chapter 11). Alternatively, you could set up an escrow account to cover potential taxes due.

**Option D: Own the house jointly with your spouse and sell it in the future to your spouse or a third person.**

**Advantages:** You (and your children) will continue having a familiar place in which to live. You and your spouse will jointly share the eventual costs of sale and taxes. While you're living in the house, your spouse may agree to pay part of the mortgage (in the form of alimony or child support), repair costs, or maintenance costs.

**Disadvantages:** Major misunderstandings between divorced spouses can arise as to responsibility for repairs, maintenance, improvements, taxes, and the like. Nonresident spouses often are unable to purchase homes for themselves while they're continuing to share responsibility for the family home. As a safeguard, spouses who jointly own a home while one party uses it should make written agreements stating the rules for repairs and other financial contributions. In order for the out-of-house spouse to keep his or her capital gains tax exclusion of \$250,000, the parties must agree in writing, or the court must order, that the in-house spouse have use of the residence.

*Is this a viable option for me? \_\_\_\_ Yes \_\_\_\_ No*

## Continued Home Ownership and Estate Planning

If you decide to hold onto your house with your spouse and sell in the future, you will need to plan your estate and possibly acquire life insurance to cover your spouse's obligations in the event of the other spouse's death.

You should also evaluate how title to the house is held. (See Chapter 12.) For example, couples who hold their property in tenancy by the entirety or as community property will no longer have that option after divorce. In addition, if you held your house in joint tenancy while you were married—an arrangement whereby the other automatically inherits if one owner dies—that joint tenancy may no longer be appropriate. In some states, divorce may automatically sever joint tenancy. Converting ownership to tenancy in common would let you leave your share of the house to whomever you wish when you die.

Carrying life insurance on your former spouse up to the value of his or her interest in the home provides you with ready cash to purchase the home from her estate if she dies before the house is sold. An agreement outlining your rights and responsibilities for co-ownership also can protect you in the event your ex-spouse dies prematurely.



Regarding the house, the following option is the best one for me:

*Option A: Buy out my spouse's share and either keep it or sell it in the future.*

*Option B: Sell my share of the house to my spouse.*

*Option C: Sell the house together and split the proceeds with my spouse.*

*Option D: Own the house jointly with my spouse and sell it in the future to my spouse or a third person.*

## **Step 10: How to Purchase the House From a Spouse or Former Spouse**

Now that you have chosen an option, you need to face one more financial reality: paying for your choice. Typically, individuals going through divorce do not have sufficient cash to purchase a spouse's interest in the family home. The following suggestions may help you to find a way to finance your best option on the house.

### **Refinance the house and pay proceeds to selling spouse.**

Refinancing the home provides a source of cash to buy out the other spouse. As a practical matter, you may refinance in order to make a buyout happen, so that you become the only holder of the loan. If refinancing does not generate enough cash to buy out your spouse, you'll need a loan (called a second mortgage) secured by the house.

Interest payments you make on this second mortgage are usually deductible. Generally, points paid in refinancing a mortgage—percentages paid to the lender—are not deductible. Check with your attorney or tax adviser on this question.

### **Sell the nonresident's interest to a third person.**

If you're going through a divorce, a relative or friend may be able to help you acquire your home while getting a tax benefit herself. Your relative or friend would purchase your spouse's interest in the house under what is called "an equity share financing arrangement." You would then co-own the property with that person and probably would pay rent. If you were to sell the property, the two of you would share in any profit.

You and your relative or friend will need an agreement spelling out your respective rights and responsibilities. To be sure the agreement complies with IRS rules and that you will both obtain available tax benefits, see your tax adviser.

### **Sell to a spouse using an installment loan.**

Spouses often agree, and some courts order, that the custodial parent continue to live in the family home with the minor children. The custodial



parent could purchase the home from the other, who accepts a secured installment note with payments over a fixed period of time. An installment note secured by the home allows the buyer to deduct interest and protects the seller in case the buyer defaults.

### **Keep the house in exchange for a release of alimony.**

If an ex-spouse would be entitled to a sizable amount of alimony, consider exchanging it for the house. You will want to discuss this fully with a tax specialist to determine the present and after-tax value of total support payments. Courts may not allow all future support payments to be waived; check with your attorney on this point.

### **Keep the house in exchange for other assets.**

Most often, couples trade assets and debts depending on needs and affordability. If you choose this option, see “Tallying Your Marital Balance Sheet” in Chapter 19.

### **Borrow from your retirement plan to finance the buyout.**

Consider your retirement plan account as a possible source of financing for a home purchase. The costs of borrowing from a retirement account are usually lower than borrowing from a traditional lender. And because you are borrowing from yourself, loan payments are credited to your retirement account. Plus, loan processing is often quicker than with a traditional lender.

However, if you do not repay the loan within a reasonable time period, it is considered a distribution from your retirement plan. In addition to having to report the withdrawal as income on your tax return (and pay ordinary income taxes on it), you'll be subject to a 10% IRS early withdrawal penalty unless certain conditions are met. (See Chapter 14 for details on retirement plans.)

You can only borrow the money if:

- the loan provides for both principal and interest payments, and
- you agree to repay the money within a “reasonable” time, generally assumed to be five years.

To be able to deduct the mortgage interest paid, the loan must be secured by your residence.

You will not be able to deduct the mortgage interest if:

- the loan is secured by your employer's contributions to your retirement plan, or
- you are considered a "key employee" of the company, which means you:
  - ✓ are an officer or the employer
  - ✓ are one of the ten largest owners
  - ✓ own more than 5% of the company during the current year or preceding year, or
  - ✓ own more than 1% of the company and earn more than \$150,000 per year.

## Questions to Ask Your Attorney or Financial Adviser



The issue of the house raises several important legal and financial questions. Below are some important questions for you to ask your attorney or research at your local law library, as well as questions for your financial adviser.

### Attorney Questions

1. Is a portion of the house considered separate property? How does the court treat a separate property interest in the family home in my state?
2. Am I entitled to a credit for mortgage payments I make while my spouse lives in the family home? Is this credit reduced by the value of tax benefits received from the mortgage interest deduction?
3. What happens if the bank forecloses on this loan?
4. What is my income tax liability, if any, if the title to the house transfers to me and there is a foreclosure?
5. If there is a foreclosure, can the lender get a judgment against me for any difference between the foreclosed value of the house and the mortgage balance that I owe?
6. Should I get divorced before or after the house sells?
7. If we continue to hold the house as joint tenants, does the right of survivorship continue after the divorce?

**Financial Adviser Questions**

1. What penalties apply for prepayment of our mortgage?
2. Do we have any unamortized points from our existing mortgage?
3. Am I adequately insured?
4. If our house sells and we are still married, should we file a joint tax return?
5. If we own it jointly and then I buy out my spouse's share, how do I report this for tax purposes?
6. Who gets the mortgage interest deduction and the property tax deduction if the title is held as tenants in common? If it's held as joint tenants?



## Retirement Benefits: Who Gets What?

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|                                                              |     |
|--------------------------------------------------------------|-----|
| Understanding Retirement Plans .....                         | 231 |
| Retirement Plans Are Not Created Equal .....                 | 237 |
| Some Plans Promise Better Tax Breaks Than Others .....       | 238 |
| Divorce Leads to Division Decisions .....                    | 238 |
| Qualified Domestic Relations Orders .....                    | 240 |
| QDRO .....                                                   | 240 |
| What Constitutes a QDRO .....                                | 240 |
| Interim QDROs .....                                          | 241 |
| The Legal Value of Your Retirement Plans .....               | 243 |
| Defined Contribution Plans, Personal Annuities, and IRAs ... | 243 |
| Defined Benefit Plans .....                                  | 244 |
| Determining the Marital Portion .....                        | 244 |
| The Financial Value of Your Retirement Plans .....           | 246 |
| Income Tax Considerations .....                              | 247 |
| Charges and Penalties .....                                  | 249 |
| Calculating the Financial Value of Plans .....               | 250 |

### Additional Financial Factors Affecting Retirement

|                                                   |     |
|---------------------------------------------------|-----|
| Plan Divisions .....                              | 256 |
| Vesting .....                                     | 256 |
| Benefits in Payout Status .....                   | 257 |
| Double Payments .....                             | 257 |
| Cost of Living Adjustments .....                  | 258 |
| Access to Cash .....                              | 258 |
| Tax Consequences in Dividing Benefits .....       | 259 |
| The Division Decision: Now or in the Future ..... | 259 |
| IRAs .....                                        | 261 |
| Defined Contribution Plans and TSAs .....         | 261 |
| Defined Benefit Plans .....                       | 262 |
| Questions to Ask an Attorney .....                | 263 |

*Whether your retirement benefits come from your own job, your spouse's job, or other retirement plans, those benefits must be divided when you divorce.*



If neither you nor your spouse has a retirement plan, skip ahead to Chapter 15.

Under the best of circumstances, planning for your retirement is difficult. You may not have given much thought to retirement planning. Perhaps you hoped it would somehow take care of itself. But it won't. You've got to give some serious consideration to when you will retire, how much income you'll need during retirement, the sources for that income, and how you will divide the retirement benefits with your ex-spouse.

Retirement planning is a relatively new concept. Generations ago, few people had to worry about late-life security because most just didn't live that long. Today, an entire industry has emerged to provide retirement planning services to aging baby boomers. The pressure to create sound retirement plans can be intense, and divorce adds another layer of complexity.

In most states, retirement plans are property to divide at divorce. Naturally, you may be emotionally attached to the retirement benefits that you worked so hard to earn or feel that you are entitled to as part of your commitment to the marriage. Take heart. Retirement benefits can serve as significant bargaining chips when spouses trade assets in the final property settlement.

## Planning for Your Retirement

No matter how you and your soon-to-be-ex-spouse divide the retirement benefits, it is important now to plan for your own retirement. Here's why, and what you will need to do:

- Americans are living longer. You should plan for an income stream through at least age 90.
- The responsibility for providing retirement income is being shifted slowly but surely by employers onto the shoulders of employees. Take advantage of any and all retirement plans available to you now through your employer. Once your credit cards are paid off, contribute more—the maximum allowed if possible.
- You have more investment choices now than ever before in 401(k) plans and self-directed plans. Learn what you need to know about available mutual funds, as well as their objectives and performance, so you can make intelligent decisions.
- If you are not part of the “triple squeeze” generation—supporting an aging parent, putting a child through college, and trying to save for your own retirement simultaneously—you may be soon. Be sure to consider these factors as you make your decisions about splitting retirement plans in divorce.



We only introduce the concept of retirement planning in this chapter. For more information, here are some resources: *Work Less, Live More*, by Bob Clyatt (Nolo); *Get a Life: You Don't Need a Million to Retire Well*, by Ralph Warner (Nolo); *IRAs, 401(k)s & Other Retirement Plans: Taking Your Money Out*, and *Creating Your Own Retirement Plan*, both by Twila Slesnick, Ph.D., EA, and John Suttle, CPA (Nolo); and *Your Next Fifty Years: A Completely New Way to Look at How, When and If You Should Retire*, by Ginita Wall and Victoria F. Collins (Henry Holt).

## Understanding Retirement Plans

Almost every book and expert on the subject of retirement planning uses a different system to categorize plans. In the pages that follow, we separate plans into several major categories.

The table on the next several pages gives detailed information on many major categories of retirement plans. Once you've determined which plans you and your spouse have, you can focus on the sections in this chapter that apply to you.

The table also specifies how, under the law, particular plans may be divided at divorce. To divide some types of plans, you must get a special kind of court order called a QDRO (pronounced "quadro")—a Qualified Domestic Relations Order (see below). Other retirement assets can be divided by a court order or judgment other than a QDRO. And some kinds of retirement assets can't be divided at divorce.

One distinction we make in this chapter is between defined benefit plans and defined contribution plans. In defined benefit plans, also called pension plans, an employer provides a fixed amount to an employee at retirement, usually in monthly payments that continue until the employee's death. In defined contribution plans, which include 401(k) plans among others, the employee and often the employer contribute money into the employee's retirement account, which grows over time. IRAs, or Individual Retirement Accounts, have similarities to defined contribution plans, although dividing the assets at divorce doesn't require a QDRO.

If you or your spouse has a defined benefit plan, it's difficult to determine just how much the plan is worth today. That's because the plan is designed to pay out in the future, and inflation causes today's dollars to have a different value than they'll have 20 or 30 years from now. It takes an expert, such as an actuary, to find the current value of this kind of plan. That makes dividing the asset a complicated task, as we'll see. It's a lot easier to tell how much a defined contribution plan or an IRA is worth today: As the account grows, the current value is reported to the account holder in regular statements.



| <b>Employer-Sponsored Defined Contribution Plans</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                               |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| <b>Type of Plan</b>                                  | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Type of Order Necessary to Divide Plan</b> |
| <b>Salary Savings/ 401(k), 403(b), and 457 plans</b> | Employee contributes a portion of salary on a pretax basis which may be matched in full or in part by the employer. The employee may defer up to \$15,000 annually, effective January 1, 2006, or \$20,000 if age 50 or older.                                                                                                                                                                                                         | QDRO                                          |
| <b>Thrift Plan</b>                                   | Employee contributes a portion of salary on an after-tax basis, which may be matched in full or in part by the employer. Because the employee's contribution is made on an after-tax basis, distributions (payouts) may be partially tax-free.                                                                                                                                                                                         | QDRO                                          |
| <b>Profit-Sharing Plan</b>                           | Employer contributes to the employee's account only if company is profitable. Amount of contribution is based on either a fixed or a discretionary formula.                                                                                                                                                                                                                                                                            | QDRO                                          |
| <b>Money Purchase Plan</b>                           | Employer contributes a fixed percentage of salary to employee's account every year. Employer contribution is mandatory, regardless of whether company makes a profit.                                                                                                                                                                                                                                                                  | QDRO                                          |
| <b>Employee Stock Ownership Plan (ESOP)</b>          | Contributions are a percentage of salary and are used to purchase company stock. The stock is held in trust for the employee, who receives his or her accumulated interest in the plan at termination of employment in the form of stock or cash. The plan provisions define the rights of the employee to exercise stock options.                                                                                                     | QDRO                                          |
| <b>Tax-Sheltered Annuities (TSAs)</b>                | TSAs are a retirement vehicle allowing teachers, public school system employees, and employees of nonprofit organizations to contribute a portion of salary into the annuity. If your TSA is through the Teachers Insurance and Annuity Association–College Retirement Equities Fund (TIAA-CREF), you can get detailed information, including account values, on the Web at <a href="http://www.tiaa-cref.com">www.tiaa-cref.com</a> . | QDRO                                          |

| Employer-Sponsored IRAs                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                        |
|--------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| Type of Plan                                                       | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Type of Order Necessary to Divide Plan                 |
| <b>Simplified Employee Pension IRA (SEP-IRA)</b>                   | SEP-IRAs are retirement plans in the form of individual retirement accounts. The same early withdrawal penalties apply here as apply to traditional IRAs or Roth IRAs. The maximum contribution is 15% of the employee's compensation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | A regular court order or judgment divides these plans. |
| <b>Salary Reduction-Simplified Employee Pension IRA (SAR-IRA)</b>  | These retirement plans were available prior to 1997 and included a salary reduction agreement in which the employee could elect to have a portion of salary contributed to a SEP-IRA on a pretax basis.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | A regular court order or judgment divides these plans. |
| <b>Simple IRA (Simplified Incentive Match Plans for Employees)</b> | Simple IRA involves a written salary reduction agreement between the employee and employer that allows the employee-participant to reduce compensation and have the employer contribute the difference to a Simple IRA on the employee's behalf. (Employees may elect not to contribute.) The employer makes matching contributions or nonelective contributions. Nonelective contributions are made for each eligible employee, even if the employee does not elect to contribute. The total employee contribution (from salary reduction) allowed for the year 2006 is \$10,000 (workers over age 50 are allowed to contribute another \$2,500). Nonelective contributions are limited to 2% of compensation. The matching contribution is the lesser of the employee contribution or 3% of the employee's annual salary. The distribution rules applicable to a traditional IRA also apply to a Simple IRA, except that if the employee withdraws money prematurely within two years after she began participating, the 10% penalty is increased to 25%. In addition, during the first two years of plan participation, a rollover (transfer of funds) can be made only to another Simple IRA plan. A Simple IRA cannot be designated as a Roth IRA. | A regular court order or judgment divides these plans. |

| Defined Benefit Plans             |                                                                                                        |                                        |
|-----------------------------------|--------------------------------------------------------------------------------------------------------|----------------------------------------|
| Type of Plan                      | Description                                                                                            | Type of Order Necessary to Divide Plan |
| <b>Business/Corporate Pension</b> | Businesses or corporations offer these defined benefit plans. The maximum annual benefit is \$160,000. | QDRO                                   |

| Government-Sponsored Retirement Plans |                                                                                                                                                                                                                             |                                                                                                                                           |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Type of Plan                          | Description                                                                                                                                                                                                                 | Type of Order Necessary to Divide Plan                                                                                                    |
| <b>Government/Military Pension</b>    | These defined benefit plans are offered to civil service workers, government employees, and military personnel. (Veterans can get additional information on their benefits at <a href="http://www.va.gov">www.va.gov</a> .) | Specific governmental regulations and procedures apply for implementation of a court order to divide these plan benefits between spouses. |

| Personal Retirement Plans/Personal Annuities |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                   |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Type of Plan                                 | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Type of Order Necessary to Divide Plan                                                                                            |
| <b>Deferred Annuity</b>                      | A deferred annuity is an annuity contract in which an insurance company promises to make payments at some future date. Taxes on appreciation are deferred until the money is withdrawn.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | A regular court order or judgment divides these plans. Most insurance companies have forms that permit the transfer of ownership. |
| <b>Traditional IRA</b>                       | Individuals may accumulate up to \$4,000 per year (workers over age 50 are allowed to contribute another \$1,000 per year). These limits rise to \$5,000 and \$6,000 in 2008. Withdrawals before age 59½ are subject to a 10% penalty. The early withdrawal penalty does not apply to a withdrawal because of disability or a withdrawal for certain medical insurance premiums, educational expenses, or first-time home buyer expenses up to a maximum of \$10,000. The account value is untaxed until funds are withdrawn.                                                                                                                                                                             | A regular court order or judgment divides IRAs.                                                                                   |
| <b>Roth IRA</b>                              | Individuals may contribute up to \$4,000 per year (workers over age 50 are allowed to contribute another \$1,000 per year). These limits rise to \$5,000 and \$6,000 in 2008. Contributions are not deductible when you make them, but qualified distributions of the contributions and earnings are tax-free when withdrawn. In general, you can take tax-free withdrawals if, after holding the account for five years, you meet certain conditions. You must be at least 59½, disabled, or using the money (up to \$10,000) toward the purchase of your first home, or you must be the beneficiary of the account. If you do not meet any of these conditions, an early withdrawal penalty will apply. | A regular court order or judgment divides IRAs.                                                                                   |

### Miscellaneous Retirement Benefits

| Type of Plan                                    | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Type of Order Necessary to Divide Plan                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Non-qualified Deferred Compensation Plan</b> | A small percentage of executives and key upper-level employees have deferred compensation plans. Generally, such a plan provides that a portion of the employee's compensation is deferred until the future. Agreements to participate in the plans are made directly between the employer and the employee, which makes requesting documentation from the employer important. (For more on these plans, see Chapter 16.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Often the plans do not permit the asset and/or income to be divided, making them legally complicated. In such a case, the court might order the employee spouse to pay the nonemployee spouse when he or she receives the benefit. Because the employee spouse pays taxes when he receives the benefit, the order should include a provision that the employee spouse will deduct the nonemployee spouse's share of taxes on the benefit. |
| <b>Social Security</b>                          | If you are divorced, you can receive benefits at age 62 based on your former spouse's earnings if the marriage lasted at least ten years, you are unmarried, and the benefit based on your own earnings is not greater than 50% of your former spouse's benefit. If your former spouse is at least age 62 and not receiving benefits but can qualify for them, you can still receive benefits if you have been divorced for at least two years and meet the other requirements. To apply for benefits on your former spouse's record, you will need either the spouse's Social Security number or date and place of birth and parents' names. Your benefits as an ex-spouse do not reduce or otherwise affect benefits available to your former spouse. You can find out about Social Security benefits by calling 800-772-1213 or visiting <a href="http://www.ssa.gov">www.ssa.gov</a> . For more on Social Security, see Chapter 5. | Social Security benefits are not considered marital property and are not divisible at divorce.                                                                                                                                                                                                                                                                                                                                            |



The Internet is a terrific resource for gathering additional information. Sites such as [www.morningstar.com](http://www.morningstar.com) and [www.yahoo.com](http://www.yahoo.com) offer valuable insights into and analysis of many different types of retirement funds. Be sure to check whether your retirement plan has information available online. Many company and government plan sponsors provide up-to-date account values and information through their websites or through automated phone systems.

## **Retirement Plans Are Not Created Equal**

Retirement plans vary tremendously. Even if two plans look equal on paper, fine-print plan provisions can make one plan more valuable than another. For instance, one plan may allow for a lump sum payout upon retirement, while another may not. Getting your retirement dollars in a lump sum may provide more flexibility than getting monthly payments in dollars whose value erodes over time or disappears entirely if the plan becomes insolvent in later years.

Retirement plans must comply with federal regulations, but the way they are apportioned at divorce may differ from state to state. One state may define retirement benefits as marital property (an asset to be divided at divorce), while another may rule that benefits are income (and not to be divided). Be sure to ask your lawyer how your state treats retirement benefits upon divorce. (In a worst-case scenario for the employee spouse, a state may regard retirement benefits as both marital property and income, allowing “double dipping” for the nonemployee spouse.)

## **Some Plans Promise Better Tax Breaks Than Others**

One major attraction of most retirement plans is that you defer paying income taxes on the money that accumulates in the plan. In some plans, though, you must pay income taxes on the money before it's deposited. One task during your divorce will be to determine the tax position of your benefits. Normally, you want to defer paying the taxes until you withdraw the money from the plan and presumably are in a lower income bracket or have a lower annual income.

## **Divorce Leads to Division Decisions**

Will you split the retirement money now or later? A present division means you divide the value of the plan now, at divorce. A future division means the plan is divided at retirement or at the point in the employee spouse's career when the benefits would normally be paid out. When and how you divide the plan depends on the type of plan you have, payout provisions, valuation methods, and other factors. Your division decision at divorce has a direct impact on your future financial security, so do not make this choice lightly.

## Retirement Plan Lingo

Before you start making decisions, familiarize yourself with the terms you are likely to hear when you investigate your retirement plans. You have a better chance of getting answers to your questions if you know what to ask for.

- **Account balance.** For plans such as IRAs and defined contribution plans, you want to know how much is in the account. This amount may simply be called the balance.
- **Accrued benefit.** The amount that has been earned (or has accrued) in a retirement plan as of a particular date.
- **Annuity contracts.** A contract between a life insurance company and the investor or owner of the annuity. Typical provisions include the amount of interest (both the guaranteed minimum and the current), surrender charges (fees for ending the contract prematurely), and penalties and options at retirement.
- **Defined benefit plan.** A plan in which the employee's retirement benefit is fixed, based on a specific formula.
- **Defined contribution plan.** A plan in which the employee and sometimes the employer contribute to a retirement account, often at regular intervals.
- **Employee benefit statement.** A summary telling you the amount of benefits (in dollars) that have accumulated in your name or your spouse's.
- **Full plan.** You may or may not need a copy of the full plan, depending on how well the summary plan description (see below) is written. Do not hesitate to ask for the full plan if you have questions or need to check details.
- **Procedures and model orders for division.** Often companies have written procedures for dividing up company retirement plan benefits. Request a copy of these materials.
- **Qualified plan.** A retirement plan that qualifies for certain benefits described in Section 401 of the U.S. Tax Code. Also known as an ERISA plan because it is governed by the Employee Retirement Income Security Act.
- **Summary plan description.** Employers are required to issue a description (annually in most cases) outlining the status and terms of retirement plans.
- **Trust/custodial agreement.** A document spelling out specific provisions of the retirement plan and the agreements between the legal owner of the plan, usually the plan administrator (called the "trustee"), and the employee (the beneficial owner). Understanding these agreements is particularly important with IRAs because they describe the costs of establishing, maintaining, and terminating IRA accounts.



## Qualified Domestic Relations Orders

QDROs, interim QDROs, and other kinds of court orders are used to divide various kinds of retirement plans.

### QDRO

QDRO stands for Qualified Domestic Relations Order. It is an order from the court to the retirement plan administrator spelling out how the plan's benefits are to be assigned to each party in a divorce. One important consideration with a QDRO is that any assets or items that the order omits, even accidentally, cannot be reinstated later.

### What Constitutes a QDRO

For a document dividing a retirement plan to be considered as a QDRO, it must specify:

- the name and last known mailing address of the employee spouse (the participant)
- the name and mailing address of the nonemployee spouse (the alternate payee)
- the amount or percentage of the participant's benefits that is to be paid to the alternate payee, or the manner in which the amount or percentage is to be determined
- the number of payments or the period to which the order applies, and
- the name of the plan, such as the Walton Company Pension Plan, to which the order applies.

A QDRO cannot:

- require a plan to pay any benefit or option not otherwise provided by the plan
- require a plan to provide benefits that exceed the value of the participant's interest as determined by an actuary
- require the payment of benefits to an alternate payee if those benefits are already payable to another alternate payee (that is, another ex-spouse) under a previous qualified order, or
- specify who will be responsible for payment of taxes.

Plans subject to QDROs include:

- qualified plans
- defined contribution plans
- defined benefit plans, and
- tax-sheltered annuities (TSAs).

Plans that QDROs do not cover include:

- deferred annuities
- traditional IRAs
- Roth IRAs
- SEP-IRAs
- nonqualified deferred compensation plans (government and church plans)
- plans administered by a plan participant (you or your ex-spouse), and
- plans under which you do not receive benefits from your ex-spouse's retirement plan.

Sometimes an order concerning the retirement plans is in a document called a Domestic Relations Order, Marital Settlement Agreement, or Divorce Settlement Agreement. These kinds of orders are not QDROs.

## Interim QDROs

If you are not ready to divide the retirement plan assets and prepare a QDRO, you can still protect your rights to survivor benefits under your spouse's retirement plan by filing what is called an interim QDRO. Later, when retirement assets are divided, you can get a final QDRO. Here's what an interim QDRO accomplishes:

- Treats the nonemployee spouse as a surviving spouse. Even if the employee remarries, the former spouse's interest in survivor benefits is paid before the new surviving spouse receives anything.
- Prohibits the employee from electing to receive retirement plan benefits during his lifetime without permission of the former spouse or a court order, except for any minimum required distribution.
- Sets the former spouse's rights at 50% of the community portion of the employee's benefit.

## Benchmarks to Retirement

Most people think of age 65 as the standard retirement age. Nonetheless, other birthdays are important in preparing for the after-work years. By noting these key ages ahead of time, you may be able to minimize taxes and maximize benefits.

Be sure to review your company's retirement plans. Each plan has its own rules about the age at which retirement benefits can begin. In some circumstances you may choose to receive your retirement benefits early, but your monthly benefit will be lower. Your benefits administrator can give you more information on what retirement benefits are available to you and the ages at which you can begin receiving these benefits. Most employers also provide employees with a statement showing an estimate of retirement benefits at early and regular retirement ages. Ages to note include:

**55.** If you retire, quit, or are fired and are age 55 or older, you may receive benefits from an employer-sponsored qualified plan without having to pay a 10% penalty. This exception does not apply to either personal or employer-sponsored IRA distributions.

**59½.** You are allowed to withdraw funds from personal and employer-sponsored IRAs and retirement plans without paying the 10% penalty.

**60.** Widows and widowers become eligible for Social Security benefits.

**62.** You may be eligible to receive Social Security benefits, but benefits will be less than if you retire at age 65.

**65.** Retirees qualify for Medicare benefits.

**67.** Full Social Security benefits are available for anyone born in 1960 or later. The actual age at which full Social Security benefits are available depends on the year in which you were born. For those born before 1938, full Social Security benefits are available at age 65. For those born later, the retirement age is between 65 and two months and 67, depending on your birth year.

**70.** Full Social Security benefits are available, even if you continue to work full time.

**70½.** You're required to begin taking distributions from IRAs (except Roth IRAs) by April 1 of the year following the calendar year in which you reach age 70½. For other employer-sponsored qualified retirement plans, distributions must begin by April 1 of the year following age 70½ or the year of retirement, whichever is later. If the participant is at least a 5% owner of the business, distributions must begin at age 70½.

An attorney should be able to advise you on filing an interim QDRO. But don't wait very long to obtain the actual QDRO. A delay can mean a loss of benefits. Be sure the QDRO is accepted by the employee spouse's plan administrator. A divorced ex-spouse without a QDRO does not have the same protection under the plan as he or she had while still married.



If you need a QDRO, consult a lawyer. Even if you are representing yourself, you'll need the help of a lawyer to make sure you have protected your right to share in retirement plans. This may require filing papers to "join" the retirement plan as a party in your divorce, and other important paperwork. Make sure you get the help you need to do it right.

## The Legal Value of Your Retirement Plans

As we've often stressed in this book, the value of an asset as recognized by a court may be vastly different from what the asset is worth outside the courtroom. So it is with retirement plans. Normally, the value of a plan as determined by the court—its "legal value"—is the following:

- For defined contribution plans, personal annuities, and IRAs, the legal value is the amount that appears on your statement as the current value of the account, less any loans outstanding.
- For defined benefit plans, the legal value is what the plan administrator or an actuary tells you it's worth.

You need to know the legal value because it is often the only dollar value lawyers and judges will take into consideration. This value represents the amount you and your spouse will argue over if you disagree about the value of the benefits. However, the legal value does not account for important financial realities: taxes, early withdrawal penalties, early termination fees, and other assessments.

### Defined Contribution Plans, Personal Annuities, and IRAs

If you have a defined contribution plan, personal annuity, or IRA, determining the legal value is simple. The plan statement gives the value. If you can't find the information you need, consult the plan administrator or get a copy of the annuity contract.

## Defined Benefit Plans

If you have a defined benefit plan, you'll need to do some work to find its legal value. Because these plans promise a payment in the future, they are harder to value in the present.

The legal value of a defined benefit plan is the plan's present or actuarial value. The plan administrator or the company may be able to give you this value. Another option, if the two spouses can agree, is to hire an independent third-party actuary to calculate the plan's present value. This should be relatively inexpensive—perhaps \$300 to \$500. The bill could run higher if your spouse hires his or her own actuary to argue that your actuary's assumptions about the future are wrong, and you find yourself having to call the actuary as an expert witness to testify in a court trial. Disputes can arise because the value of these plans lies in the future and is therefore speculative.

After you get the actuarial value for each plan, you will need to determine what percentage of the plan qualifies as marital property to be divided at divorce. (Some actuaries will do this at the same time they establish the value of the plan.)

## Determining the Marital Portion

To simplify the process of calculating the marital portion of your retirement plan, use the marital interest percentage method (total months of participation while married divided by total months of plan participation.) This method is generally used in dividing defined benefit plans.

The problem with using this method is that it does not accurately value the higher contributions made during the later years of employment. In the early years of plan participation, the contribution is smaller because contribution is based on salary, which is likely to have increased over time. For a more precise calculation, you may need to talk to your actuary, CPA, financial planner, or pension administrator.

## How Can a Pension Worth Hundreds of Thousands Later Be Worth So Little Now?

Actuaries commonly look at several factors when calculating the value of retirement plans. For example, plans often assign benefits based on the highest three years of earnings. But during divorce, current salary is used in the calculation.

Similarly, calculations of the future worth of a plan will differ if a person anticipates they will retire at age 62 rather than age 65. They will also vary with the rate of inflation that's predicted and how the payouts are structured. Some plans include a COLA—cost of living adjustment—that affects the plan's value. And, finally, some actuaries assume a consistent rate of growth—say, 5% of retirement plan investments—and others use a different figure.

For example, take the case of John and Andrea. An actuary tells Andrea that the marital portion of John's plan will pay out about \$100,000 during John's retirement but is worth only about \$38,000 in today's dollars. So if she and John divide the plan equally at divorce, she will get one-half, or \$19,000. If she waits until John retires, she could get \$50,000. Andrea, understandably, wants to know why something supposed to be so valuable tomorrow can be worth so little today.

Here's why. John's pension plan shows that he will get \$10,000 per year during retirement. He's supposed to retire at age 65 and, according to actuarial tables, live ten years after that. In theory, then, he will receive \$100,000.

John, however, is only 45 and won't be retiring for another 20 years. Assuming an inflation rate of 4%, the \$10,000 he will be paid in the first year of his retirement is equivalent to \$4,564 today. The second year of his retirement (21 years from now) is worth even less.

The *Present Value Factors* chart in the appendix compares time value with inflation and can help you make a rough estimate of the value of benefits. The left-hand column on that chart represents years, while the percentages across the top of the page are rates of inflation. Follow the 20-year line (the number of years after which we assumed John would retire) to the 4% predicted rate of inflation and you find the present value factor of .4564. Multiply \$10,000 by .4564 and you get the "value today" of \$4,564. You can follow the rest of the 21- 30-year lines to see how the rest of the value of John's plan was calculated.

### **How the Separation Date Can Affect a Retirement Plan's Value**

A doctor in California asked the pension plan administrator of his medical group to tell him the value of his plan. The doctor had separated from his wife four years earlier, and they were ready to divide the retirement plan. The administrator valued the plan currently at \$225,000. Wanting a second opinion on this obviously valuable asset, the doctor went to an actuary for another valuation of the plan. The actuary valued the plan at only \$175,000. Why the difference? Under California law, the marital period of the doctor's retirement plan stopped on the day of separation four years before. The doctor's wife was entitled to only a portion of the amount that had accrued from their wedding day to the date they separated. By contrast, the plan administrator had calculated the entire value of the plan, including the four-year period that the couple had been separated. Different states define the applicable period differently.

For more on the significance of the separation date, see Chapter 5.

## **The Financial Value of Your Retirement Plans**

The financial value of a retirement plan is almost always lower than its legal value. Financial value encompasses everything from unexpected bonuses (a cash settlement upon divorce) to nasty surprises (a penalty from the IRS).

Although retirement benefits are often years away from being paid out and you may not see the financial return for some time, you nevertheless want to compare all assets on similar terms during your divorce. Just as you may be contemplating a sale of the family home, so, too, must you assume the "sale" (or liquidation) value of a retirement plan. When negotiating the overall settlement, you'll want to be able to compare each asset's legal value and financial value.

To find the financial value of your retirement plans, you'll have to look at income tax consideration as well as charges and penalties. Below is an overview.

## **Tax Brackets and State Income Taxes**

Throughout this book, we assume that you fall into the 25% federal income tax bracket. Because some states tax a percentage of IRA deposits and other retirement plans (thrift plans and employee stock ownership plans), you'll need to ask a tax adviser if you might owe state taxes on your benefits. You won't owe state income taxes in Alaska, Florida, Nevada, South Dakota, Texas, Washington, or Wyoming, states that impose no income taxes. (New Hampshire and Tennessee tax only interest income and dividends.)

## **Income Tax Considerations**

Uncle Sam does not let you simply accrue money for retirement without receiving his share sooner or later. Your job is to find out when taxes on benefits are paid—either before the money goes into the retirement plan or when it comes out during retirement. The plan will contain this information.

Suppose your ex-spouse offers to keep the house but to give you all the retirement plan benefits—your own and your spouse's. Should you take the deal? You cannot answer that question unless you know what income tax you will owe when the benefits begin paying out.

At first glance, your share of the retirement benefits and your share of the house may equal the same dollar amounts. But those amounts probably reflect legal reality only. You may have to pay substantial income taxes when you begin receiving the retirement benefits, while your spouse could take the house and possibly avoid any tax liability.

When dividing plans at divorce, look to keep the plan in which the contributions—or at least some of the contributions—were made with after-tax dollars. When plans are funded with after-tax dollars, part of the money you withdraw at retirement will not be taxed.

Qualified plans—such as defined contribution plans and defined benefit plans—must meet certain IRS regulations for employers to get tax benefits. Tax-sheltered annuities (TSAs), although not considered qualified plans, tend to be affected by the same regulations.



In determining the taxability of money contributed to a retirement plan, the IRS asks two questions:

- Did the employer contribute money? If the answer is yes, when you begin collecting your retirement benefits, you'll have to pay taxes on the amount your employer contributed and the interest earned on that contribution.
- Was the contribution made with pretax or after-tax dollars? Retirement plans are sometimes referred to as contributory or noncontributory. Contributory plans are those to which the employee makes a contribution, and employers often make a matching contribution. For instance, some employers chip in 50 cents for every dollar the employee contributes. Some even match the employee contribution dollar for dollar, often to a limited amount, such as \$1,000.

The IRS may seem harsh, but it doesn't intend for you to pay taxes twice on your income. If you are currently reporting as income the money you are contributing to your plan, you will not have to pay taxes on those contributions when the money comes out of the plan at retirement.

If you do not know the percentages of your retirement plan contributions made with pretax dollars and after-tax dollars, you can:

- contact the plan administrator, personnel manager, or benefits coordinator and ask for an accounting of pre- and after-tax contributions, or
- check the annual benefits statement, which should break down pretax and after-tax contributions.

The income taxes you will have to pay on retirement benefits are based on a number of factors: your tax bracket, the tax basis of the plan, your status as either the plan participant (employee) or the alternate payee (spouse of plan participant), and the type of plan you or your spouse have.

The tax basis of a retirement plan consists of money contributed that's already been taxed as income—that is, contributions for which you weren't permitted to take a deduction when you filed your taxes. Most employer contributions, plus interest earned on all contributions—from both employer and employee—are not included in basis because those dollars are not taxed until they are paid out. The plan administrator should be able to help you find the tax basis.

For IRAs and deferred annuities, special tax considerations apply.

**IRAs.** When you deposit money into a traditional IRA, you do not report that money as income—that is, you pay no taxes on it. This assumes that neither you nor your spouse is an active participant in a qualified plan. If both of you are active participants in qualified plans, you can deduct your \$3,000 IRA contribution if your income falls within specified limits.

**Roth IRA.** Unlike with regular IRAs, money you contribute to a Roth IRA is not tax deductible. But you receive the benefits tax-free when you collect at retirement. This makes Roth IRAs particularly valuable to retain in a divorce.

In general, you can also take tax-free withdrawals if you have held the account for five years or more and are under age 59½, become disabled, use up to \$10,000 toward the purchase of your first home, or are the beneficiary of the account.

You can convert your traditional IRA to a Roth IRA only if you have an adjusted gross income of less than \$100,000. You will not have to pay the 10% penalty on early withdrawals.

**Deferred annuities.** The money put into a deferred annuity usually comes from your savings—or from income on which you have already been taxed. The tax basis of your annuity is the total purchase price less unpaid loans and any other tax-free amounts you received. You will pay taxes on the difference between the current account value and the tax basis. From the standpoint of income tax liability, the Roth IRA and deferred annuities are similar. Both will have a tax basis, because contributions were made with after-tax dollars.

## Charges and Penalties

Participants in retirement plans often face charges and penalties when there is an early withdrawal—that is, when money is taken out before a certain date. Check your plan documents carefully or ask your plan administrator to see if these charges or penalties apply, to be sure you don't unknowingly incur them.

If a participant in a qualified retirement plan takes money out before she retires, the IRS may assess an early withdrawal penalty (also called an excise tax) as high as 10% of the amount withdrawn. There may be a state tax penalty in addition to the federal penalty.

If the holder of an IRA or an annuity withdraws money before reaching age 59½, she'll pay a 10% penalty to the IRS unless she meets certain exceptions.

Insurance companies and some investment companies impose surrender charges to discourage participants from withdrawing funds before the date specified in the contract. These can take the form of deferred sales charges on mutual funds, surrender charges on annuities, early withdrawal charges on CDs, and brokerage or transaction costs.

Another tax wrinkle concerning IRAs: If the participant spouse transfers all or part of an IRA to the other spouse, neither will owe taxes on the transfer. If the participant spouse cashes out the IRA and transfers the money to the other spouse, however, the participant spouse will owe taxes on the money withdrawn.

## Calculating the Financial Value of Plans

As we've said, any retirement plan has a financial value different from the legal value that a court assigns it. The financial value takes into account real-world factors like tax consequences and early withdrawal penalties. Doing the calculation that follows and entering it into the chart may seem complicated. But knowing the financial value of a plan will help you make a better-informed decision about where the assets should go in your divorce settlement.

The calculation is different depending on whether the plan is a defined benefit plan or is a defined contribution plan, TSA, or IRA.

### Defined Contribution Plans

For each defined contribution plan, TSA, or IRA plan, follow the steps below to complete the chart that follows this calculation.

1. In Column A, enter the total number of months you or your spouse participated in the plan.
2. In Column B, enter the total number of months in which you or your spouse participated in the plan while married.
3. In Column C, enter the marital interest percentage by dividing the number in Column B by the number in Column A. For example, if you participated in a plan for 120 months and were married 72

months while participating in the plan, you would have a marital interest percentage of 60%  $[(72/120) \times 100]$ .

4. In Column D, enter the dollar amount of the account. (The amount should be on your statement.)
5. In Column E, enter the marital portion of the account by multiplying the amount in Column D by the percentage in Column C.
6. In Column F, enter the amount of any loans you and your spouse have taken against this retirement account. (The amount should be on your statement.) Do not include any separate loans.
7. In Column G, enter the legal value of your retirement plan by subtracting the amount in Column F, if any, from the amount in Column E.
8. In Column H, enter the tax basis of the retirement plan—the after-tax contributions, including nondeductible contributions made to an IRA.
9. In Column I, enter the marital portion of the tax basis by multiplying the figure in Column H by the percentage in Column C.
10. In Column J, enter the financial value of this account. You do this as follows:

|                                                                                 |            |
|---------------------------------------------------------------------------------|------------|
| <i>Marital Account Value (Column E less Column D)</i>                           | \$ _____   |
| <i>Early Withdrawal Penalty*</i>                                                | – \$ _____ |
| <i>Taxes Due on Distribution (Marital Account Value<br/>x your tax bracket)</i> | – \$ _____ |
| <i>Other Surrender Charges or Penalties</i>                                     | – \$ _____ |
| <i>Financial Value</i>                                                          | \$ _____   |

*\* The early withdrawal penalty is the amount in Column D x 10%, or x 25% for employer-sponsored SIMPLE IRAs you have participated in for two years or less. Be sure to add any state early withdrawal penalties.*

## Defined Benefit Plans

For a defined benefit plan, follow the steps below to complete the chart that follows.

1. In Column A, enter the total number of months you or your spouse participated in the plan.

2. In Column B, enter the total number of months in which you or your spouse participated in the plan while married.
3. In Column C, enter the marital interest percentage by dividing the number in Column B by the number in Column A. For example, if you participated in a plan for 120 months, and were married 72 months while participating in the plan, you would have a marital interest percentage of 60%  $[(72/120) \times 100]$ .
4. In Column D, enter the actuarial value of the plan. (You'll need to consult with the plan administrator or an actuary for this information.)
5. In Column E, enter the marital portion of the account by multiplying the value in Column D by the percentage in Column C.
6. In Column F, enter the amount of any loan you and your spouse have taken against this retirement account. (The amount should be on your statement.) Do not include any separate loan.
7. In Column G, enter the legal value of your retirement plan by subtracting the amount in Column F, if any, from the amount in Column E.
8. In Column H, enter the tax basis of the retirement plan—the after-tax contributions.
9. In Column I, enter the marital portion of the tax basis by multiplying the figure in Column H by the percentage in Column C.
10. In Column J, enter the financial value of this account. You do this as follows:

|                                                                                 |            |
|---------------------------------------------------------------------------------|------------|
| <i>Marital Account Value (Column E less Column D)</i>                           | \$ _____   |
| <i>Taxes Due on Distribution (Marital Account Value<br/>x your tax bracket)</i> | – \$ _____ |
| <i>Other Surrender Charges or Penalties</i>                                     | – \$ _____ |
| <i>Financial Value</i>                                                          | \$ _____   |

Once you have completed the steps above for each retirement plan, add all the numbers in Columns D, E, F, and J and enter these results in their respective columns on the “Total” line. Then, be sure to transfer the totals to the *Net Worth: Assets & Liabilities Worksheet* in Chapter 12.

Also transfer the legal value to the *Marital Balance Sheet* in Chapter 19. Any separate property (including a separate property loan) should be entered in the appropriate section on the *Marital Balance Sheet*.



| Calculating the Financial Value of Plans (cont'd) |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
|---------------------------------------------------|----------------------------------|-----------------------------------|---------------------|-----------------------------|-------------------------------|------------------------------------|----------------|--------------|---------------------------------|-----------------------|
| Type of Plan                                      | A: Months of Plan Participation* | B: Months of Marriage During Plan | C: Marital Interest | D: Dollar Amount of Account | E: Marital Portion of Account | F: Marital Loans Against Account** | G: Legal Value | H: Tax Basis | I: Marital Portion of Tax Basis | J: Financial Value*** |
| Qualified Plans—Defined Benefit Plans             |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Business or Corporate Defined Benefit Plan        |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Government-Sponsored Retirement Plans             |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Government Plans or Military Pensions             |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Personal Retirement Plans                         |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Deferred Annuities                                |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Personal IRA                                      |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Traditional IRA                                   |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Roth IRA                                          |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |
| Total                                             |                                  |                                   |                     |                             |                               |                                    |                |              |                                 |                       |

\*Check state laws to determine the date retirement plan benefits become separate property. \*\*If separate, do not include balance here, but be sure to include separate property loan balance on the marital balance sheet in Chapter 19. \*\*\* If your state awards unvested benefits, you may wish to subtract the unvested portion.

## Rolling Over Your Distribution From Your Ex-Spouse's IRA

Under IRA rules, any money you withdraw from an IRA prematurely (before age 59½) must be reinvested (referred to as a “rollover”) within 60 days or it will be subject to an IRS early withdrawal penalty.

You can defer the income tax liability on the distribution by rolling over the distribution to another IRA within 60 days of the divorce. If you decide to roll over the distribution, keep in mind the following:

- You cannot roll over any portion of the distribution that is attributable to after-tax contributions of the plan participant. In other words, any nondeductible contributions that your ex-spouse made to his IRA can't be rolled over into your account. But if part of the distribution is attributable to after-tax contributions and part is attributable to before-tax contributions, you will be able to roll over a portion of the distribution.
- If you take possession of funds from your ex-spouse's IRA and *then* roll them over into your own IRA, 20% will be withheld for taxes.
- However, if the plan distribution goes directly to the new plan, then you avoid the 20% withholding on the distribution.

Even if you have someone else managing your account, it is still your responsibility to see that it is done correctly. In a recent case, a taxpayer's account was being handled by a trustee. The trustee mistakenly transferred a rollover distribution to a brokerage account instead of an IRA. When the trustee discovered its mistake, the amount was transferred to a qualified plan, but the 60-day limit had expired. The IRS ruled that the distribution was not rolled over within the 60 days, and therefore the distribution was taxable even though the taxpayer was not at fault.

The lesson to be learned is that it is your responsibility to follow up on how your accounts are handled. Mistakes by trustees can and do occur. Failure to properly time your rollover can lead the IRS to assess penalties.



## Additional Financial Factors Affecting Retirement Plan Divisions

Often, spouses keep their own retirement benefits in exchange for other assets. As a simplified example, if each spouse's share of the house is \$75,000 and the nonemployee spouse's share of the other's retirement plan is \$75,000, then the employee would keep the retirement plan while the other spouse would take the house.

Fairly dividing assets during a divorce, however, is not as simple as the above example. To truly exchange assets of equal value, you must take a variety of financial factors into account. Consider the following factors before you propose how to divide retirement benefits with your spouse.

### Vesting

One retirement plan concept that is especially important at divorce is vesting. You've probably heard people say they'll be "fully vested" after a certain number of years or that they'll "be vested in another year." Vesting means that you are entitled to the retirement benefits your employer has contributed to the plan for you. Even if you quit your job or you are fired, you are entitled to those benefits.

Being *fully* vested means that you are entitled to all the benefits your employer has contributed. Being partially vested means that if you were to begin receiving the benefits from your employer's contribution to the plan, you'd be entitled to only a particular percentage. If the plan paid \$1,000 a month upon retirement and you were 30% vested, you'd receive \$300.

Vesting affects only the portion of your benefits that your *employer* contributed toward your retirement plan and its earnings. The contributions you make to your plan, and the earnings attributable to those contributions, always belong to you.

If you are not fully vested, consider consulting an attorney to determine whether your state characterizes nonvested retirement benefits as marital property. If it does not, then division of your plan in that state is not affected by vesting. If the state does characterize the benefits as marital property, however, and you divorce before you fully vest, you could face the awful prospect of paying your spouse a portion of the retirement benefits even

though you might *never* receive them yourself. If you are not fully vested and might encounter this costly dilemma, be sure you know your rights and obligations before negotiating over your retirement plan as part of your divorce settlement. (See “Questions to Ask an Attorney,” below.)

For example, in a state where nonvested benefits are considered marital property, the total value of your retirement plan is calculated and that amount is divided. If you want to keep the retirement plan, you might have to buy out your spouse’s share or exchange it for another asset. If you’re fired or change jobs, you might not receive your employer’s contributions to your retirement plan, even though you paid your spouse for them.

To reduce these risks, carefully consider whether to divide your plan in the future or in the present (see “The Division Decision,” below).

If you are fully vested (and therefore entitled to your employer’s contribution and required to divide all retirement benefits at divorce), double check the details of your benefits package to be sure you know about any provisions that could be affected by divorce or death. In some cases, when a single (unmarried or divorced) employee dies before the age of 55, even though fully vested, that person’s estate may not be entitled to the benefits.

## **Benefits in Payout Status**

Even after pension benefits vest, the employee may still have to wait before actually receiving the benefits. Usually, vested pensions do not pay out (“mature”) until the worker reaches a certain age, such as 65. Some employees choose to continue to work even after the pension matures because the pension payments increase the longer the employee works past the maturity date. But if you continue to work to prevent your ex from getting matured benefits, a court may order you to retire (or to pay your former spouse for his or her share from the benefits).

## **Double Payments**

Be aware of the risk of double payments. You should not have to pay your spouse twice for the retirement benefits you receive as income. If your spouse is given a portion of your retirement benefits as part of the property settlement, you do not want your retirement benefits to be considered part

of your income when alimony is calculated. To protect yourself against double dipping, remember the following: You can divide the plan or divide the stream of income, but do not divide both.

This double dipping of payments is one of the most common ways in which retirement benefits are lost at divorce. Don't let it happen to you. One way to protect yourself is to include a provision in your settlement exempting your retirement payments from being considered income for the purposes of alimony. Check with your attorney to discuss your options.

## **Cost of Living Adjustments**

Cost of living adjustments (COLAs) are provisions in retirement plans that provide for an increase in benefits based on your life expectancy and the formula by which benefits are paid out. A plan with a cost of living provision is usually more valuable than a plan without one. Check with the plan administrator to see whether your retirement plan or your spouse's includes a cost of living provision.

## **Access to Cash**

In getting cash out of a retirement plan at divorce, the alternate payee (nonemployee spouse) holds the advantage. If you are the alternate payee, you can request that the QDRO provide for a payout when a marital property settlement becomes final. The plan administrator must withhold 20% of the amount distributed to you to offset some of the income taxes you will owe, even if you deposit it into an IRA or any other qualified pension plan within 60 days of receiving it. If the plan administrator directly rolls over the plan assets into your IRA (or another qualified plan), however, the 20% mandatory withholding rule does not apply.

If money is tight (as it often is during divorce), you may want to open a savings account with all or part of the money you receive from a retirement plan distribution. Although you'll have to pay taxes on this money, you will have easy access to the funds should you need them. Most important, you won't be hit with the 10% early withdrawal penalty that would apply if you put it into an IRA and then needed to withdraw money to live on.

If you are the plan participant (employee spouse), you probably won't get an early payout from your plan even though your spouse may. Your

divorce does not change your status with respect to your benefit payments. It's rare that you will be able to get to your benefits before the date on which the plan specifies you are to receive them. The exceptions are if you become disabled, if you quit your job or get fired, or if the plan itself ends.

## Tax Consequences in Dividing Benefits

When dividing matured benefits in a divorce, the employee spouse must be aware of the tax risks. Many divorce settlements specify that the non-employee spouse gets a share of the other spouse's retirement benefits when the employee spouse retires. Usually, the pension plan administrator sends a check to the ex-spouse. But this means that only the retired employee pays income taxes on the benefits.

To reduce your tax burden, make sure the QDRO orders the pension plan administrator to send two checks—one to you and one to your ex-spouse. Each person pays income taxes on the benefits he or she receives. If your plan is not subject to a QDRO, it may be possible to reduce your tax liability by using the domestic relations order, marital settlement agreement, or divorce agreement to specify how the benefits are to be paid.

## The Division Decision: Now or in the Future

Taking into account all the financial factors that can affect your retirement benefits, you are ready to move on to the division decision itself. Generally, you can divide a retirement plan or take a payout in one of two ways:

**Present Division.** You divide the value of the plan now, at divorce, instead of later, at retirement.

**Future (Deferred) Division.** You divide the value of the plan at retirement or at that point in the employee's career when benefits would normally be paid out. Future divisions are most common with defined benefit plans, which promise payment in the future and are difficult to place a current value on.

Remember—no matter which approach you take, everything must be spelled out in the QDRO.

### **Survivor Benefits**

A defined benefit (pension) plan must offer survivor benefits to the spouse of a participant employee who dies before retirement age and is vested. The surviving spouse is entitled to payments known as a qualified preretirement survivor annuity. An ex-spouse can be treated as the participant's current spouse for the purpose of receiving these survivor benefits. But such a provision must be included in the QDRO, or the benefits will be lost.

If the participant dies prior to retirement, the preretirement survivor annuity begins paying out to the survivor at the point when the participant would have reached the earliest retirement age provided for in the plan.

### **Debts and Retirement Benefits After Divorce**

After a divorce, some former spouses find it necessary to file for bankruptcy to discharge their debts. With a QDRO, retirement benefit payments are made directly from the plan to the nonemployee ex-spouse. This eliminates the risk that the employee might be able to avoid the obligation to pay retirement benefits to the nonemployee ex-spouse by filing for bankruptcy. If, however, there is no QDRO, then the obligation to pay retirement benefits is a personal obligation, and the employee may be able to avoid it by filing for bankruptcy.

Even if a former spouse doesn't file for bankruptcy, it's easy to fall behind on support obligations. While money cannot be forcibly taken from most retirement plans to pay support, some courts have ruled that IRA funds are not insulated if an ex-spouse or the IRS seeks to collect back alimony or child support.

Furthermore, once divided, retirement plan assets are not insulated from the IRS if taxes are due on a joint return. That's true even if the parties agreed that one spouse was liable for payment of those taxes.

Here are some pros and cons of dividing each of the three main types of retirement plans either at the time of the divorce or later at retirement age. You'll see that the considerations can vary depending on whether you're the alternate payee (nonemployee spouse) or the plan participant (employee spouse).

## IRAs

IRAs are not subject to QDROs and can be divided any way the court orders. They can also be transferred from one spouse to another.

Distributing the proceeds from an IRA, however, triggers a 10% early withdrawal penalty for those under age 59½. The proceeds are also fully taxable to the participant spouse.

Transferring an IRA to a spouse without a divorce or separation agreement or a court order creates tax liability for the participant spouse. The only way to avoid the tax is for the court to order a direct transfer of the IRA from one plan to a new one for the receiving spouse.

*I would like to divide the IRAs as follows:*

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## Defined Contribution Plans and TSAs

There are advantages in splitting this kind of plan now, and they are the same whether you are the alternate payee or the plan participant. If you divide the benefits now, you'll cut an economic tie to your spouse and won't need to worry about it later. In addition, consider that:

- deferred divisions are difficult for the court to supervise
- each spouse gains control over his/her share of funds, and
- it's obvious how much the plan is now worth—you don't need an actuary to figure out its future value.

But there are also advantages in waiting before you divide the plan. For both the plan participant and the alternate payee, waiting allows time for any unvested benefits to become vested. Additionally, if you have

insufficient property or cash to buy out your spouse's share, deferred division may be the only way to even up a property split. Also, because the plan participant won't receive money from the plan until later anyway, why divide it early? If you have unvested benefits and you divide now, you may end up paying more to your spouse than you receive from the plan.

*I would like to divide the defined contribution plans or TSAs as follows:*

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## **Defined Benefit Plans**

The advantages of splitting this kind of plan at divorce rather than later depend on whether you are the plan participant or the alternate payee. For the alternate payee, the advantages are:

- you can get the money now
- risk of not vesting is eliminated
- there is no 10% early withdrawal penalty for distribution, and
- you avoid the risk that the plan will suffer large investment losses or that the company or plan will go bankrupt.

The plan participant should consider that:

- because the value is based on present earnings, your ex-spouse won't receive the benefit of your future work and pay increases, and
- if you outlive the mortality tables, you may end up receiving more income than the actuary predicted you would.

There are also advantages in waiting to divide this type of plan. Because benefits are based on the participant's future earnings, waiting allows the alternate payee to enjoy the fruits of those increased earnings. For the plan participant, the vesting risk is shared with the ex-spouse.

*I would like to divide the defined benefit plans as follows:*

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## Questions to Ask an Attorney

Retirement plans raise many legal and financial questions. Below is a list of important questions for you to ask your attorney or research at your local law library.

1. Does my state treat retirement benefits upon divorce as marital property to be divided, or as income that may belong only to the earner? (Benefits treated as income could affect the amount you pay or receive in alimony or child support.)
2. Is a nonqualified deferred compensation plan considered income, or property subject to division?
3. What is the marital portion of our retirement benefits?
4. Must I (or my spouse) be fully vested to receive my (or my spouse's) employer's contribution to a retirement plan?
5. Does my state consider nonvested retirement plans to be marital property?
6. Does my state consider disability pension benefits to be income, or property subject to division?
7. How much experience do you have in writing Qualified Domestic Relations Orders? Do you use another firm to write them? (Some firms specialize in this area.)
8. Does my spouse's pension plan direct the distribution of assets upon my death in the event I die before receiving all of the benefits?

To get details on retirement plans held by your spouse, speak with his or her employer and, if it's a large company, the head of the human resources department. That person may refer you to the plan administrator or the trustee/custodian of the plan. The plan administrator keeps the books and records on the retirement plan, and the trustee/custodian is authorized to administer the plan assets. Begin by writing a letter to your spouse's employer. A sample is below.



**Sample Letter to Spouse's Employer**

Re: Marriage of \_\_\_\_\_

Case No. \_\_\_\_\_

Employee's Name: \_\_\_\_\_

Employee's Social Security #: \_\_\_\_\_

Employee's Date of Birth: \_\_\_\_\_

To Whom It May Concern:

This letter is to serve as notice that I am pursuing an interest in any retirement or other deferred compensation plans available through your organization or its successors for the benefit of employees belonging to \_\_\_\_\_ (name of your spouse).

At your earliest possible convenience, I would appreciate receiving the following:

1. Summary of all deferred compensation plans or stock plans that are available to employees, directors, officers, or other personnel of your company for which my spouse is eligible to participate, regardless of whether s/he participated in the plan.
2. A copy of the full text of all plans for which my spouse was eligible, regardless of his/her participation therein.
3. A copy of all benefit statements for my spouse for the last five years.
4. Documentation of all stock or stock options owned by or held for the benefit of my spouse.
5. Acknowledgment that your organization has received this Notice. An acknowledgment for the Plan Administrator is below.
6. A copy of your written procedures used in determining your requirements for a Qualified Domestic Relations Order.
7. The formal names of the plan or plans.
8. The names and addresses of all plan administrators.
9. Any other documentation or information, that you believe may be of assistance in order to establish a Qualified Domestic Relations Order.

To save everyone the cost of formal discovery, I ask that you respond as soon as possible.

**Sample Letter to Spouse's Employer (cont'd)**

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

I consent to the release of this information.

Date: \_\_\_\_\_

Employee/Plan Participant Spouse: \_\_\_\_\_

**ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF ADVERSE INTEREST**

I, \_\_\_\_\_, hereby acknowledge receipt of the letter dated \_\_\_\_\_, from \_\_\_\_\_, which states that s/he claims an interest in any retirement, pension, or other deferred compensation plan or accounts of \_\_\_\_\_.

Dated: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

\_\_\_\_\_

If you don't get the answers you need, write to the plan administrator, company president, or anyone else who could help you get the information you need. You might engage the services of an attorney if you're having particular problems. However you do it, persist until you get what you need. Retirement plans are too complex not to leave a "paper trail," so do not let your spouse or spouse's attorney intimidate you into thinking that the information you need does not exist. ■

# Financial Investments: How Do We Divide the Portfolio Pie?

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|                                                           |     |
|-----------------------------------------------------------|-----|
| Concepts to Consider.....                                 | 270 |
| An Investment From Marriage May Make Little Sense         |     |
| When You're Single.....                                   | 270 |
| Don't Take an Investment You Can't Live With .....        | 270 |
| Use Your Divorce to Cut Your Losses.....                  | 270 |
| No Investment Is Risk Free.....                           | 271 |
| Asset Options: Sell Now, Keep It Forever, or T            |     |
| ake It for a Loss.....                                    | 271 |
| Balance Security, Income, and Growth.....                 | 273 |
| If You Don't Know the Tax Basis, the Tax Bill             |     |
| May Shock You .....                                       | 273 |
| Beware of Inflation and Inflated Claims .....             | 276 |
| Look to Total Return, Not Yield .....                     | 276 |
| Steps to a Settlement.....                                | 277 |
| Step 1: What Investments Do You and Your Spouse Hold?.... | 286 |
| Step 2: Who Owns Each Investment?.....                    | 286 |

|                                                                                        |     |
|----------------------------------------------------------------------------------------|-----|
| Step 3: What Is the Legal (Equity) Value of<br>Each Investment? .....                  | 286 |
| Step 4: What Is the Financial (After-Tax/After-Sale)<br>Value of Each Investment?..... | 289 |
| Which Assets Should You Keep?.....                                                     | 311 |
| How Will You and Your Spouse Divide the Investments? .....                             | 312 |

*In divorce, when you divide the investments made by you and your spouse during marriage, it's doubtful you'll get exactly what you want. But you should get what you need.*



If neither you nor your spouse has investments, skip ahead to Chapter 16.

**T**he first step in dealing with financial investments is to objectively analyze your portfolio—that is, the stocks, bonds, mutual funds, real estate investments, gold, collectibles, and the like that make up your investment holdings. Then work to get the assets that can put you in the best position to build toward your future after divorce.

How do you know which investments will serve you best?

Ask a dozen financial planners and you'll get the same answer: "That depends."

Choosing the investments that will serve you best depends on several factors—your future plans, current age, risk tolerance, income needs, and investment experience. You should aim for investments that meet your individual needs, allow you to sleep at night, and keep your taxes to a minimum.

As you read this chapter and evaluate your investments, keep in mind the following two questions:

- Is the investment performing well?
- Is the investment appropriate for me?

Whether you are a novice or veteran investor, use the formulas and tips in this chapter to select the investments that will best support you after the divorce. Even if you are completely unfamiliar with the investments you and your spouse share, you need not be intimidated—if you do your homework.

In some instances, you may need to consult with financial experts before making decisions, because certain investments can carry complications due to tax laws or illiquidity (not being able to sell the investment at a reasonable price). Tax advisers, stockbrokers, and financial planners may be particularly useful. Whether you get help from experts or not, you can save time and money by doing some groundwork and information gathering.

## Concepts to Consider

To get started, here are a few basic investment concepts to help you divide investments when a marriage ends.

### An Investment From Marriage May Make Little Sense When You're Single

While married, the two of you may have chosen certain investments because they met your shared goals—such as a mutual fund to help save for the down payment on a house or an annuity to increase the retirement kitty. Once you divorce, however, your goals, tax bracket, and ability to withstand losses may change. Perhaps as a couple you could afford to hold on to a stock with great potential, even when its value fell. As a single person, however, such a stock may be totally unsuitable if you're looking for stable income. Similarly, a spouse in a high-income tax bracket may not want to keep an investment that generates substantial taxable interest.

### Don't Take an Investment You Can't Live With

Does the mere mention of Wall Street give you the jitters? Can you bear to sit by and watch what happens to the bond market? Do you have the time, energy, and interest to keep up with the performance of your investments? Think about these questions carefully as you look at each asset. Like a spouse, you should only keep an investment if you can stand living with it. Don't take an asset if you don't understand its risks.

### Use Your Divorce to Cut Your Losses

When it comes to investments, no one likes to admit to making a bad call or a poor decision—especially if your spouse warned you not to buy the loser in the first place. But you wouldn't fight to keep the awful picture Aunt Lucille gave you for a wedding present, would you? Why hold on to investments that are not doing well? Because of the emotional distress of divorce—or simple “investment inertia”—some people hang on to investments they ought to sell. Divorce is the perfect time to review *all* of your investments and unload those that drain your portfolio value or don't meet your long-term financial goals.

## No Investment Is Risk Free

“Risk-free” investing is one of the great illusions of the American marketplace. Regardless of what you see, hear, or want to believe, every investment carries risk. (Even what were once the most trusted places for money—banks, savings and loans, and insurance companies—have shown this to be true.) Ignoring risk is common among today’s investors who have been hit by a virtual avalanche of new financial products, each promising rewards that may or may not materialize. Take time to ask questions about the downside of any investment you plan to keep as part of your settlement. Keep in mind one general rule: *The greater the potential for gain, the greater the risk.*

In addition, never keep an investment that carries a greater risk than you can afford. Doing so increases the risk of loss, because you will probably sell the investment when its value drops rather than ride out its ups and downs.

**EXAMPLE:** In the property settlement, Cheryl received 300 shares of WOW Mutual Fund, a fund investing in small-capitalization computer companies. The fund had a high return of 22% in the prior year. Her husband, Jim, convinced her that with the \$14,000 worth of WOW shares, she would make more money than with the lower-return Treasury bonds he was taking as part of the settlement. Cheryl quickly learned, however, that the greater the potential for gain, the greater the risk; her \$14,000 investment dropped to \$8,700 the next year.

## Asset Options: Sell Now, Keep It Forever, or Take It for a Loss

“Assume sale.” Those two words sum up the best advice you can follow when deciding what to do with assets at divorce. So often, cherished investments you thought you would keep forever end up on the auction block after divorce. Ideally, you should keep only those investments that financially fit your goals and needs—and you should sell together or transfer to your spouse those that do not. If you sell the investment at divorce, you share the selling costs and potential tax bite with your soon-to-be-ex-spouse. Waiting until after the divorce to unload assets means you incur all those expenses yourself.

Too often, divorcing couples overlook the simple fact that an asset they are eventually planning to sell can be sold *prior* to the divorce. They get caught up in making tradeoffs to reach a quick or supposedly fair property settlement and accept assets they don't want or intend to keep. If, however, you assume sale, you're forced to consider taxation and other costs. Then your negotiations can be based on the real cost of keeping the asset and not an illusory value. And if you do keep the asset, you know what it's truly worth.

An investment asset may provide you with a tax loss when you sell it. If it would, and if you have another asset on which you expect a gain, it may make financial sense to take the loss-producing asset in the settlement. Then you can sell the "loser" after the divorce to offset the tax gain from the sale of the other asset, and reduce your overall tax liability. It pays to know which stocks, bonds, or mutual funds carry a tax loss with them. For example, limited partnerships and rental real estate, which produce a loss because of depreciation, actually increase your tax liability. Be sure to consult a tax advisor before taking one of these items that show a loss.

**EXAMPLE:** Suppose you bought a stock for \$2,000 and sold it for \$1,500. Your loss is \$500. If you have another stock you bought for \$1,500, held for 12 months and then sold for \$2,500, your gain is \$1,000. If you didn't sell the first stock, you'd pay a capital gains tax of \$150 on the \$1,000 gain. If you sold both assets, however, the loss partially offsets the gain and your tax liability would be 15% of \$500, or \$75.

### Sell Now

Elliot accepted his wife's offer of their coin collection even though he did not particularly care about the coin market and didn't really want the collection. Nevertheless, he accepted it with the illusion that by making this concession to his wife, he would speed up the settlement. Not only did the settlement proceedings drag on, but after the divorce, when he sold the collection, Elliot paid a hefty sales commission and substantial taxes on the gain—which meant Elliot received an asset of lower value than he thought he was getting. Coin collections and other collectibles did not get the benefit of a reduced capital gains rate under the Taxpayer Relief Act of 1997 and are still taxed at 28%.



## Balance Security, Income, and Growth

Your investments should give you more than headaches. In fact, a portfolio should balance three financial needs over your lifetime: security, income, and growth.

During your divorce, analyze whether or not your investments meet these needs—and in what proportions. The degree to which you need security, income, and growth will change depending on what phase of life you're in. Generally, you will want more growth than income while you are young and more income than growth when you get older.

**Security.** Conventional wisdom among financial advisors holds that you should have an emergency fund in place before you even consider investing. This fund should equal three to six months of your cost of living expenses such as mortgage, rent, utilities, and food. It should be readily available in a money market fund or short-term bond fund. Disability or life insurance can also provide important sources of income or cash in the event of an emergency. Once your emergency needs are met, you can consider investments for income or growth.

**Income.** Income investments pay monthly, quarterly, semiannual, or annual dividends or interest to supplement your salary or provide an income during retirement.

**Growth.** These types of investments should “make your money work for you,” offering steady growth beyond what you would earn from conservative vehicles like certificates of deposit or money markets. Growth investments include individual stocks, equity mutual funds, and real estate.

## If You Don't Know the Tax Basis, the Tax Bill May Shock You

“Buy low and sell high.” That cliché of the marketplace leaves out an important piece of information: When you sell high, you owe Uncle Sam taxes on the profit. Just how much you owe is determined by the amount of profit you realized on the investment. That profit can be determined once you know the tax basis of the investment.

### Income vs. Growth Needs

Susan, a young executive, had just received a raise when her husband decided he wanted a divorce. Being a conservative investor, her husband had invested their money in a large number of utility stocks, which provided a steady but small flow of dividends. Because Susan's salary increase gave her a more than adequate income, she wanted cash for her share of the stocks rather than the stocks themselves. With cash in hand, she invested in several high-tech stocks that paid no dividends (and therefore did not increase her tax liability for ordinary income), but gave her what she wanted and needed: potential for appreciation or growth.

For your mutual funds and stock investments, your tax basis is the original purchase price plus the value of any dividends you reinvested in the funds or stocks, minus any commissions you paid to purchase. The tax basis for real estate is the original purchase price plus the cost of improvements you made to the property, minus any tax benefits received. Specific formulas for finding the tax basis are given throughout this chapter.

**EXAMPLE:** Leslie bought 100 shares of stock at \$12 per share in May and another 100 shares of the same stock in December for \$30 per share. Three years later, when the stock soared in value to \$80 per share, Leslie decided to sell it, after holding all of the stock more than 12 months. Assuming a 15% capital gains tax rate, here's what Leslie's tax bill would look like:

| May Stocks                     |          | December Stocks                |                |
|--------------------------------|----------|--------------------------------|----------------|
| Sell 100 shares @ \$80         | \$ 8,000 | Sell 100 shares @ \$80         | \$ 8,000       |
| Bought 100 shares @ \$12       | – 1,200  | Bought 100 shares @ \$30       | – <u>3,000</u> |
| Gain                           | \$ 6,800 | Gain                           | \$ 5,000       |
| (times capital gains tax rate) | x .15    | (times capital gains tax rate) | x <u>.15</u>   |
| Taxes due                      | \$ 1,020 | Taxes due                      | \$ 750         |

The tax basis for the stocks purchased in May is the \$12 per share price. Upon sale of these stocks, there is a greater gain, which in turn creates a bigger tax bill. For the stocks purchased in December, with the \$30 per share purchase price, the gain is less, and so are the taxes. If Leslie had to sell half of the shares, she would be better off selling the December stocks than selling those she purchased in May. By doing so, she saves \$270 in taxes ( $\$1,020 - \$750 = \$270$ ).

Suppose Leslie's spouse offers to split the 200 shares of stock. Should Leslie take the May stocks or the December stocks? Leslie would be better off taking the December stocks, on which the taxes owed are lower. The fairest settlement would be for each spouse to take 50 of the May stocks and 50 of the December stocks. Another possibility would be to sell the stocks and split the tax bill equally. In that case, the calculations would look like this:

|                                                                   |                   |
|-------------------------------------------------------------------|-------------------|
| <i>200 shares sold @ \$80/share,<br/>held more than 12 months</i> | <i>\$16,000</i>   |
| <i>Tax Basis</i>                                                  |                   |
| <i>100 shares @ \$12 = \$1,200</i>                                |                   |
| <i>100 shares @ \$30 = \$3,000</i>                                |                   |
|                                                                   | <i>- 4,200</i>    |
| <i>Total Gain</i>                                                 | <i>= \$11,800</i> |
| <i>Capital Gains Tax Rate</i>                                     | <i>x 15%</i>      |
| <i>Total Taxes on Gain</i>                                        | <i>= \$1,770</i>  |
| <i>Each Spouse's Share of Taxes Due</i>                           | <i>= \$885</i>    |
| <i>Each Spouse's Share of Proceeds<br/>from Sale of Stock</i>     | <i>= \$5,015</i>  |

Keep in mind that losses and gains are netted to determine the final tax liability, and commissions paid to brokers reduce the final tax liability. This example assumes that this was the only asset Leslie and her spouse sold this year.

## Beware of Inflation and Inflated Claims

Nothing takes the fun out of investing faster than losing money. Yet investors often overlook the simple factor of inflation, which constantly erodes the value of their holdings. To determine the true amount of return you earn from an investment, you must consider not only taxes, but inflation as well.

Take the simple example of a \$10,000 certificate of deposit paying 3% interest at a time when inflation is running 3.5% annually. At the end of a year, the CD would seem to be worth \$10,300 (the \$300 earned via the 3% interest payment).

Assuming a federal tax bracket of 25%, the amount due the government would equal \$75, reducing the \$10,300 to only \$10,225. Now factor in inflation. The \$10,000 loses \$350 (inflation of 3.5%) a year. At the end of a year, instead of \$10,300, the CD really has the purchasing power of only \$9,875 (\$10,225 – \$350), for a stunning loss of almost 1% on the original \$10,000.

Be on guard, too, for inflated or misunderstood claims. Quite commonly, investors consider only one dimension, such as the interest rate an investment pays. They often forget about the numerous other factors that affect value, such as inflation, sales charges, management fees, dividend payments, and other unforeseen risks.

## Look to Total Return, Not Yield

The commonly misunderstood differences between yield and total return illustrate the problem of one-dimensional analysis. *Yield* represents income in the form of dividends and interest. *Total return* is the yield plus the percentage of appreciation (growth) or loss in the per share value of an investment.

**EXAMPLE:** Ron saw an advertisement for a mutual fund offering a yield of 9%. Later that day, his broker called to tell him about another fund with a 5% yield. Which should he buy?

Ron must look beyond yield to total return. The yield represents only the dividends or interest he'll receive on his shares. The total return takes into account both the yield and the percentage increase (appreciation) or decrease (loss) in the value of the shares.

Ron's broker explained that the shares in the fund yielding 9% decreased in value by 20% the previous year, meaning the total return was a minus 11% ( $9\% - 20\%$ ). The shares in the fund yielding 5%, on the other hand, increased 8.3%, for a total return of 13.3%. Note that the higher-yield fund actually produced a lower total return.

### Tax Basis and the IRS

When spouses divorce, information concerning the tax basis of an asset must be given to the spouse who receives the asset when title (ownership) changes. Because tax consequences are so fundamental to the selection of an asset, however, you should know the tax basis before you divide your assets, not after.

## Steps to a Settlement



Now that you have an overview of the concepts to consider when making investment choices, it is time for a plan of action for reaching decisions. Answer these questions to formulate your plan:

1. What investments do you and your spouse hold?
2. Who owns each investment?
3. What is the legal value or fair market value of each investment?
4. What is the financial or after-tax/after-sale value of each investment?
5. Which assets should you keep?
6. How will you and your spouse divide the investments?
7. How do you feel about your decision?

To answer these questions, complete the *Investment Chart* that follows. Begin by listing your investments in the far left column, using suggestions offered in Step 1, below. As you move on through Steps 2, 3, and 4, you will find detailed instructions on how to fill in the remaining columns. Finally, when you reach Step 6, you will return to the chart to show how you want to divide assets with your spouse.

| Investment Chart           |                                                                      |                                                                        |                                                                  |        |              |                            |
|----------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1) | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Cash & Cash Equivalents    |                                                                      |                                                                        |                                                                  |        |              |                            |
| Bank Checking Accounts     |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 4.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Bank Savings Accounts      |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 4.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Certificates of Deposit    |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                         |                                                                      |                                                                        |                                                                  |        |              |                            |

| Investment Chart (cont'd)                          |                                                                      |                                                                        |                                                                  |        |              |                            |
|----------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1)                         | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Money Market Funds<br>1.<br>2.<br>3.               |                                                                      |                                                                        |                                                                  |        |              |                            |
| Money Market<br>Mutual Funds<br>1.<br>2.<br>3.     |                                                                      |                                                                        |                                                                  |        |              |                            |
| Personal Notes Payable<br>to You<br>1.<br>2.<br>3. |                                                                      |                                                                        |                                                                  |        |              |                            |
| Other<br>1.<br>2.<br>3.                            |                                                                      |                                                                        |                                                                  |        |              |                            |

| Investment Chart (cont'd)  |                                                                      |                                                                        |                                                                  |        |              |                            |
|----------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1) | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Stocks and Bonds           |                                                                      |                                                                        |                                                                  |        |              |                            |
| Common Stocks              |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Preferred Stock            |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Mutual Funds               |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Treasury Bills             |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                         |                                                                      |                                                                        |                                                                  |        |              |                            |



| Investment Chart (cont'd)                                                                                                                                        |                                                                      |                                                                        |                                                                  |        |              |                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1)                                                                                                                                       | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Government Bonds (such<br>as Ginnie Maes)<br>1.<br>2.                                                                                                            |                                                                      |                                                                        |                                                                  |        |              |                            |
| Municipal Bonds<br>1. _____ Mutual Funds<br>_____ Unit Trusts<br>_____ Individual Bonds<br>2. _____ Mutual Funds<br>_____ Unit Trusts<br>_____ Individual Bonds. |                                                                      |                                                                        |                                                                  |        |              |                            |
| Corporate Bonds<br>1.<br>2.<br>3.                                                                                                                                |                                                                      |                                                                        |                                                                  |        |              |                            |

| Investment Chart (cont'd)   |                                                                      |                                                                        |                                                                  |        |              |                            |
|-----------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1)  | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| EE U.S. Savings Bonds       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| Zero Coupon Bonds           |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| Other                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| Real Estate                 |                                                                      |                                                                        |                                                                  |        |              |                            |
| Income or Rental Properties |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                          |                                                                      |                                                                        |                                                                  |        |              |                            |

| Investment Chart (cont'd)                |                                                                      |                                                                        |                                                                  |        |              |                            |
|------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1)               | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Real Estate Investment<br>Trusts (REITs) |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| Raw Land                                 |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| Other                                    |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| Insurance Investments                    |                                                                      |                                                                        |                                                                  |        |              |                            |
| Cash Value of Life Insurance<br>Policies |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |
| 3.                                       |                                                                      |                                                                        |                                                                  |        |              |                            |

| Investment Chart (cont'd)  |                                                                      |                                                                        |                                                                  |        |              |                            |
|----------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1) | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Annuities                  |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Other                      |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Limited Partnerships       |                                                                      |                                                                        |                                                                  |        |              |                            |
| Real Estate                |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Oil and Gas                |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| Cable Television           |                                                                      |                                                                        |                                                                  |        |              |                            |
| 1.                         |                                                                      |                                                                        |                                                                  |        |              |                            |
| 2.                         |                                                                      |                                                                        |                                                                  |        |              |                            |

| Investment Chart (cont'd)                             |                                                                      |                                                                        |                                                                  |        |              |                            |
|-------------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------|--------|--------------|----------------------------|
| Investments<br>(Section 1)                            | Who Owns It<br>H - Husband<br>W - Wife<br>J - Jointly<br>(Section 2) | Legal or<br>Equity Value<br>(Fair Market<br>Value-Debt)<br>(Section 3) | Financial<br>(After-<br>Tax/After-<br>Sale) Value<br>(Section 4) | I Keep | Spouse Keeps | Sell and Split<br>Proceeds |
| Equipment Leasing, etc.<br>1.<br>2.                   |                                                                      |                                                                        |                                                                  |        |              |                            |
| Other<br>1.<br>2.                                     |                                                                      |                                                                        |                                                                  |        |              |                            |
| Collectibles                                          |                                                                      |                                                                        |                                                                  |        |              |                            |
| Gold & Silver<br>1.<br>2.                             |                                                                      |                                                                        |                                                                  |        |              |                            |
| Coins, Jewelry, Art,<br>& Other Valuables<br>1.<br>2. |                                                                      |                                                                        |                                                                  |        |              |                            |
| Other<br>1.<br>2.                                     |                                                                      |                                                                        |                                                                  |        |              |                            |

## Step 1: What Investments Do You and Your Spouse Hold?

Using Column 1 of the *Investment Chart*, list all investments owned by you, your spouse, and the two of you together. If you're unsure of certain investments, check old tax returns, or call your financial planner, stockbroker, discount brokerage firm, accountant, or other tax adviser. You should also check online if you or your spouse has used electronic brokerage services.

## Step 2: Who Owns Each Investment?

In Column 2, show whether the investment is owned by husband (H), wife (W), or jointly (J). Investments owned jointly—except those that are separate property—are divided at divorce. Remember: The name of the person on the investment does not necessarily determine who owns it. Most states divide marital property, even when assets are only in one spouse's name.

List the investments owned separately by you and your spouse even though they won't be divided in the settlement. As you negotiate the settlement, it is possible that your or your spouse's separate investments will be considered in terms of income needs or for alimony.

If you need more information on what constitutes separate and marital property, see Chapter 12.

## Step 3: What Is the Legal (Equity) Value of Each Investment?

With investments, the equity or legal value basically equals the fair market value or face value—that is, the amount the investment is worth, less any debts. (For cash or cash-like assets—such as CDs or money market accounts—the legal value is the same as the account balance.) The legal value is generally the dollar amount attorneys use when discussing investments in trying to settle your divorce. In Steps 4 and 5, below, you will take a closer look at the financial value of your investments.

To find the legal or equity value of your investments, you often need to do no more than place a phone call.

You may, however, run into problems determining which date to use in valuing the account. As mentioned in Chapter 5, many states value portfolio assets, like houses, as close to the *date of divorce or settlement* as possible, not the *date of separation*. You'll need to find out your state's practice.

Even if your state legally values assets at the date of separation, you and your spouse can agree to another date—and you should. Stocks, bonds, mutual funds, and other liquid assets, particularly, should be valued as close as possible to the date you take control of them. Otherwise, if you value assets as of the date of separation, but then don't transfer them until months or years later, you may incur losses because of market forces.

Ultimately, to get through your divorce, you will probably need to find the account balance at different times. But you can begin by filling in the amounts for the legal value of investments in Column 3 of the *Investment Chart*. Use the following information to help you calculate or locate the legal value for each investment. Some of this information may be listed on your *Net Worth Statement* from Chapter 12.

**Cash and cash equivalents.** For your bank checking and savings accounts, certificates of deposit, and money market funds, call the bank or look at your statement. For money market mutual funds, call the fund manager or administrator. The value of personal notes will probably be found among your personal papers. Find out whether the account is pledged as security for any debt. Be sure to investigate your spouse's business, if any, and any personal loans.

**Stocks and bonds.** For most stocks and bonds, you can check with your broker, your discount brokerage firm, or an online service. If you call a brokerage firm, ask for the trading department to check the current price of stocks or mutual funds. You can also look at the business section of the newspaper. For stocks, look in the stock market tables for the price in the column labeled "Close." That's the price the stock was selling at when the market closed the day before. Multiply this number by the number of shares you own to get a ballpark value. Get an estimate of bonds by calling a broker or discount brokerage firm. Banks can give you the value of savings bonds. For mutual funds, look in the business section of the newspaper in the column labeled "NAV," the Net Asset Value.

**Real estate.** For income or rental property, you will probably need an appraiser. (See Chapter 13.) For the value of real estate investment trusts (REITs), ask a broker or brokerage firm or check the published values in a newspaper. To find the value of raw land, check the purchase price and ask a few real estate agents to find out whether land values have gone up or down in your area. It's also helpful to know if there is a balance due on the mortgage or if the property is free and clear of debt.



Two identical pieces of property can have different values if the rents charged in one building are not the same as the rents charged in the other. Rent control laws can also affect (bring down) the value of property. A spouse trying to artificially lower the value of rental property may rent units at below-market rates on a month-to-month basis, and then raise rates (and the property's value) after the divorce. If you suspect this is happening, check previous tax returns to see what rents were charged and ask realtors how much rent is charged for comparable units in the area.

**Insurance.** Call or write the insurance company or broker and ask for the policy's current value and surrender value. If you're not the owner of the policy, the insurance company may refuse to give you the information. Call your spouse, or have your attorney call your spouse's attorney to get what you need.

**Limited partnerships.** Investments in businesses that operate as limited partnerships are more difficult to value than, say, investments in stocks or bonds. That's because, unlike stocks, there is no conventional trading market for interests in limited partnerships.

Certain "secondary markets," however, do buy and resell limited partnership interests. But these markets may assign widely divergent values to limited partnership interests. Ask a stockbroker or financial planner for the names of several secondary market firms. In your survey, ask for the price at which the partnership shares could be sold and whether additional costs would be incurred.

There will probably be a difference between what secondary markets say the partnership interest is worth and the amount you will actually realize from its sale. And there will be an even larger difference between your original purchase price and what you could sell it for now. Generally, these markets buy partnership shares at a deeply discounted price from the amount you originally paid or might receive if held until maturity. Use the amount the firms give you to fill in the *Investment Chart*.

Limited partnerships can be complicated investments, especially when you're attempting to value and divide your interests. For additional discussion, see below.





Do not consider the value of a limited partnership as being equal to what you paid for it. Most limited partnerships, very popular investments in the 1980s, are worth significantly less now. (In fact, some are worthless.) If you take that asset at an inflated value, you'll be getting less in your settlement than you are entitled to.

**Collectibles.** Gold and silver values are listed, per ounce, in the daily newspaper. Coins, jewelry, art, and collectibles must be appraised. Be sure to find the wholesale or resale price, not the retail price.

### Step 4: What Is the Financial (After-Tax/After-Sale) Value of Each Investment?

Remember: You will need to know the tax basis of your investments to calculate gains, losses, and your potential tax liability when you sell. In addition, the IRS requires that when you transfer property at divorce, you must provide tax basis information to the party who will keep the asset. If you are in the dark about investments, you may need to press matters with your spouse to get the information to figure the tax basis. You cannot make informed decisions about which investments to accept or sell in the settlement unless you know your potential tax liabilities *before* any property transfer takes place.

Knowing the tax basis will help you find the financial value (or after-sale/after-tax value) of your investments. For most investments, you will probably enlist the services of a professional tax advisor, but the following formulas and tips should help you get a ballpark estimate of your taxes and other costs.

After calculating the financial value of each investment, enter that value in Column 4 of the *Investment Chart*. But first, talk to a broker, financial planner, or other investment professional to find out whether your investments carry any additional or hidden costs. If they do, subtract those amounts from the financial value before entering the values in Column 4. Be on the lookout for:

- **Account charges.** An amount charged for maintaining an account with a broker, brokerage house, or firm.
- **Redemption fees.** What you pay to redeem or sell the investment.
- **Trading fees.** A commission for buying or selling stocks or bonds.

- **Early withdrawal penalties.** Penalties incurred for early withdrawals on CDs, life insurance annuities, and other investments.

## Cash and Cash Equivalents

Because the tax basis of cash and cash equivalent is essentially what you will liquidate them for, there are no taxes due when you cash them in. To the extent that you earn interest on checking accounts, savings accounts, money market accounts, or certificates of deposit, you must report that interest as income and pay taxes on the interest the year you earned it. To estimate the interest you will earn this year, call your banker. Then simply use the legal value as the financial value, and write that amount in Column 4 of the *Investment Chart*.

## Stocks, Bonds, and Mutual Funds

Calculating taxes and other costs associated with stocks and bonds will require you to do some tedious paperwork. Old statements will have to be gathered to reconstruct trading activity that has occurred in the past (perhaps, even, over several years). Only you can decide whether it's worth it to do that work yourself or hire someone else for the job. No matter who does it, you will need this information to complete your tax return when you sell stocks or bonds. There are good software packages and websites that can help you make this calculation. Several investment calculators may be found at [www.financenter.com](http://www.financenter.com). Some brokerage or financial planning services companies may be able to determine this figure for you using their own specialized software programs.

### Bonds

See an accountant or tax advisor to analyze the tax aspects of bonds. The Internal Revenue Code has numerous complicated rules depending on when the bonds were purchased and the type of bonds you own. For instance, some bonds, such as municipal bonds, are tax exempt. This means their interest is free from taxes. But if you bought them at a discount, when you redeem them or they mature you will have to pay capital gains tax on the difference between the purchase price and maturity value.

Also keep in mind these general rules:

- **EE U.S. Savings Bonds.** You can pay taxes on the interest generated on EE bonds each year, as with most investments, or when you redeem

the bonds. You can defer paying taxes on the interest if you roll the bonds forward into HH bonds.

- **HH Bonds.** These are government bonds, on which pay you interest semiannually.
- **Zero Coupon (Corporate or Municipal) Bonds.** On corporate bonds, you must pay taxes on interest earned each year even though you don't receive that interest until the bond matures.

Once you talk to an accountant or other tax advisor about your bonds, enter their financial value in Column 4. This value can be determined using the formula for stocks and mutual funds, below. But keep in mind that the value of bonds fluctuates with interest rates. If interest rates in the U.S. have risen since you purchased your bond, the value will be slightly less than when you bought it. If interest rates have declined, the opposite will be true: Your bond, if you sell it, will be worth more than when you bought it. Check your monthly statement from your brokerage account or ask your broker for the amount you will get if you liquidate your bond or bonds.

### Stocks and Mutual Funds

Use the following formula and instructions to find the financial value for your stocks and mutual funds. To complete the calculations, you will need to know the following:

\$ \_\_\_\_\_ *Purchase Price*

Check your confirmation statement or call your broker. Be sure to include the initial investment plus any subsequent purchases you made.

\$ \_\_\_\_\_ *Dividends Reinvested*

These should be shown on your monthly statement from the brokerage firm or mutual fund company. You can also look on tax Form 1099, sent annually to you from the company, showing dividends or interest earned each tax year.

\$ \_\_\_\_\_ *Commissions and Transaction Fees*

These are fees paid when you purchase stocks and mutual funds unless the mutual fund is a "no load" fund, meaning it has no commission. The amount is on your confirmation statement; if it's not, call your broker or

discount brokerage firm. For “load” mutual funds, the commissions, which are automatically charged, are reflected in the purchase price. Ask your broker whether the fund has a redemption charge or surrender charge, a fee you pay when the fund is sold.

\$ \_\_\_\_\_ *Equity Value*

Enter from Column 3 of the *Investment Chart*.

\$ \_\_\_\_\_ % *Tax Rate*

You will need to know your income tax bracket and how long you have held the investment to know what to put here. For everyone except those in the 15% tax bracket, if you held the stock or mutual fund for more than 12 months, enter 15% as your tax rate. If you held it less than 12 months, check with your tax preparer for your tax bracket.

To find the financial (after-sale/after-tax) value of stocks and mutual funds, use the following formula:

1. Find the tax basis by adding the purchase price, reinvested dividends and commissions, and transaction fees (paid at purchase).
2. Find the adjusted sales price by subtracting commissions and transaction fees (to be paid when you sell) from the fair market value.
3. Find the gain (or loss) by subtracting the tax basis from the adjusted sales price.
4. Find the taxes due (or tax refund) by multiplying the gain (or loss) by the capital gains rate based on your tax bracket.
5. Find the financial value by subtracting the taxes due (or adding the tax refund) from (or to) the adjusted sales price.

**EXAMPLE:** Let's assume you bought 100 shares of XYZ at \$10/share and it has grown to \$22/share.

1. Find the tax basis by adding the purchase price, reinvested dividends, and commissions and transaction fees (paid at purchase).

|                                           |   |           |
|-------------------------------------------|---|-----------|
| <i>Purchase Price</i>                     |   | \$1,000   |
| <i>Dividends Reinvested</i>               | + | 60        |
| <i>Commissions &amp; Transaction Fees</i> | + | <u>65</u> |
| <i>Tax Basis</i>                          | = | \$1,125   |

2. Find the adjusted sales price by subtracting commissions and transaction fees (to be paid when you sell) from the equity value.

|                                           |   |           |
|-------------------------------------------|---|-----------|
| <i>Equity Value</i>                       |   | \$2,200   |
| <i>Commissions &amp; Transaction Fees</i> | - | <u>68</u> |
| <i>Adjusted Sales Price</i>               | = | \$2,132   |

3. Find the gain (or loss) by subtracting the tax basis from the adjusted sales price.

|                             |   |              |
|-----------------------------|---|--------------|
| <i>Adjusted Sales Price</i> |   | \$2,152      |
| <i>Tax Basis</i>            | - | <u>1,125</u> |
| <i>Gain (or Loss)</i>       | = | \$1,027      |

(If you incur a loss on this asset, you can net it against a gain on another asset to reduce your capital gains tax liability.)

4. Find the taxes due by multiplying the gain by the capital gains rate based on your tax bracket.

|                               |   |            |
|-------------------------------|---|------------|
| <i>Gain</i>                   |   | \$1,027    |
| <i>Capital Gains Tax Rate</i> | x | <u>15%</u> |
| <i>Taxes Due</i>              | = | \$ 154     |

5. Find the financial value by subtracting the taxes due from the adjusted sales price.

|                             |   |            |
|-----------------------------|---|------------|
| <i>Adjusted Sales Price</i> |   | \$2,152    |
| <i>Taxes Due</i>            | - | <u>154</u> |
| <i>Financial Value</i>      | = | \$1,998    |

To apply this formula to your situation, fill in the blanks below. Copy this page to use as a worksheet or to calculate the value of additional investments.

- Find the tax basis by adding the purchase price, reinvested dividends, and commissions and transaction fees (paid at purchase).

$$\begin{array}{rcl}
 \text{Purchase Price} & & \$ \underline{\hspace{2cm}} \\
 \text{Dividends Reinvested} & + & \$ \underline{\hspace{2cm}} \\
 \text{Commissions \& Transaction Fees} & + & \$ \underline{\hspace{2cm}} \\
 \text{Tax Basis} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

- Find the adjusted sales price by subtracting commissions and transaction fees (to be paid when you sell) from the equity value.

$$\begin{array}{rcl}
 \text{Equity Value} & & \$ \underline{\hspace{2cm}} \\
 \text{Commissions \& Transaction Fees} & - & \$ \underline{\hspace{2cm}} \\
 \text{Adjusted Sales Price} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

- Find the gain (or loss) by subtracting the tax basis from the adjusted sales price.

$$\begin{array}{rcl}
 \text{Adjusted Sales Price} & & \$ \underline{\hspace{2cm}} \\
 \text{Tax Basis} & - & \$ \underline{\hspace{2cm}} \\
 \text{Gain (or Loss)} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

- Find the taxes due by multiplying the gain by the capital gains rate based on your tax bracket.

$$\begin{array}{rcl}
 \text{Gain} & & \$ \underline{\hspace{2cm}} \\
 \text{Capital Gains Tax Rate} & \times & \$ \underline{\hspace{2cm}} \\
 \text{Taxes Due} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

- Find the financial value by subtracting the taxes due from the adjusted sales price.

$$\begin{array}{rcl}
 \text{Adjusted Sales Price} & & \$ \underline{\hspace{2cm}} \\
 \text{Taxes Due} & - & \$ \underline{\hspace{2cm}} \\
 \text{Financial Value} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

Keep in mind that the above formula calculates only federal income taxes. In most states, you will have to pay state taxes as well.

**Dividing Stocks, Bonds, and Mutual Funds: Consider the Tax Basis**

As noted at the beginning of this section, the IRS requires that you give information about the tax basis of an asset to the person receiving it at the time of transfer. It's very important for you to understand the tax basis of an asset. If you don't, you could decide to keep investments that give you a higher tax burden than those your spouse will carry. At the least, you ought to share the tax burden equally.

Once you know the tax basis, you can calculate the taxes that would be due if you were to sell the assets. Knowing the potential tax liability enables you to make an equal comparison between investment assets and other assets. This knowledge will also influence your tax strategy after the divorce, as you consider whether to sell or keep the investments.

The IRS allows three different methods to calculate the taxes. In these examples, a gain is assumed. If you have experienced a loss on your investments, the investment may be of value if you have a gain elsewhere—but only if you sell the asset immediately.

**First In–First Out.** If you've purchased shares of stock over several years at different prices, this method lets you sell the first batch you bought. For example, Mindy and Ryan bought 300 shares of stock at \$13 per share in 1994 and another 300 shares of the same stock at \$20 per share in 1996. The stock is now worth \$25 per share. They decide to sell 300 shares before they divorce. But which 300?

Using the First In–First Out option, they would sell the 300 shares bought in 1994. They would have to pay taxes on the gain of \$12 per share ( $\$25$  fair market value –  $\$13$  purchase price =  $\$12$  gain). Had they sold the 1996 shares, they'd owe taxes on a gain of only \$5 per share ( $\$25$  fair market value –  $\$20$  purchase price =  $\$5$  gain). But by selling the shares that gave them a larger profit, they can split the taxes owed.

As an alternative to selling shares before the divorce, Mindy and Ryan consider splitting the 600 shares in half. It's fair on the surface. If one spouse keeps the 1994 shares, and the other keeps the 1996 shares, however, the division becomes unfair because the tax liabilities differ. They could even things up again if they divide other property to cover the tax difference, or if they each take half the 1994 shares and half the 1996 shares.

**Specific Identification.** This time, assume that Mindy and Ryan bought their 600 shares at various times paying prices ranging from \$13 to \$20

per share. If they decide to sell 300 shares before their divorce and use the Specific Identification option, they would pinpoint precisely which 300 shares to sell—perhaps 100 bought at \$13, another 100 bought at \$18, and the final 100 purchased at \$20 per share.

If they split the shares as part of their divorce settlement, they should consider the tax liability for the shares bought at each price. If Mindy wants 300 of the \$20 stocks—leaving Ryan with all of the stocks purchased at \$13 and \$18 per share—Ryan will pay more in taxes than Mindy will pay.

**Average Basis.** Mindy and Ryan's third option is the Average Basis. As the name implies, this option lets them take an across-the-board average tax basis on all the shares of stock, no matter when purchased and at what price per share. They would simply take the total amount paid (and dividends reinvested) and divide it by the total number of shares owned.

Because of the difficult calculations and the fact that supporting documentation regarding reinvestments and commissions is often missing, many divorcing couples use the Average Basis to divide stocks and mutual funds. Before settling on it, however, compare it to the First In–First Out and Specific Identification options. Incorporate the calculations from this section on tax basis options with financial values when you read Steps 5 and 6, below.

### Document Dividends and Reinvestments

When Evelyn divorced in 1994, she got \$5,000 worth of shares in a mutual fund as part of her settlement. A savvy investor, she sold the shares in the last week of September 1997 for \$10,000. Initially, it appeared Evelyn would pay taxes on the \$5,000 gain:  $\$10,000$  (sales price) –  $\$5,000$  (original price) =  $\$5,000$  (gain).

But Evelyn had kept records showing that she reinvested all the dividends she received. In adding up each reinvestment, she found that she had reinvested total dividends of \$1,600 into the fund. This finding lowered her tax liability. Remember: Her tax basis is the original purchase price plus reinvested dividends. Her original \$5,000 investment, plus the dividend reinvestments of \$1,600, totaled \$6,600. The amount of gain she had to pay taxes on, therefore, was only \$3,400, not \$5,000.



## Real Estate

In valuing real estate investments, you can consider many of the factors raised in Chapter 13, assuming you own a family home. If you haven't read that material, refer to it for basic formulas and an explanation of real estate terms.

Unlike the family home, investment properties can be hard to value. The value of the property is affected by the local economy, rental vacancy rates, rent control or stabilization laws, property management, and other market forces. Nevertheless, you can estimate the financial (after-sale/after-tax) value of your real estate investments by using these guidelines.

\$ \_\_\_\_\_ *REITs (Real estate investment trusts)*

A real estate investment trust company invests in a variety of holdings, which can range from apartments and hotels to office buildings and shopping centers. Because most REITs are publicly traded, their value is easily identified. Refer to the stock tables in the newspaper, or ask your broker for current values. To find the financial value, subtract any commissions or fees from the fair market value.

\$ \_\_\_\_\_ *Raw land*

Real estate agents and appraisers normally base the value of raw (undeveloped) land on current comparables, that is, the amount at which comparable parcels of land are currently selling. Other factors to consider in determining the real financial value of raw land are:

- how land will be affected by a city's general plan
- the kind of building permits that have been issued in the area, and
- how land surrounding your land will be used.

Real estate agents can help you answer these questions. Also, talk with the county building permit office and the city office regarding permits and future land use. Then, make your best "guesstimate" of the value, and use that number as the financial value.

\$ \_\_\_\_\_ *Income or rental properties*

For most income-producing property, use the formula in Chapter 13, Step 6, to determine the financial value. With rental property, you must also

consider total depreciation: the amount you've deducted in taxes to account for the declining value of the property.

If you own real property, such as a residential rental, know that there is an exception to the lower capital gains rates that went into effect under the Taxpayer Relief Act of 1997. Not all the net capital gain that you have on this kind of property will qualify for the lower rate of 15% (or 5% for those in the 15% bracket). Instead, to the extent that you have taken depreciation on the property, your gain will be taxed at a maximum rate of 25%.

**EXAMPLE:** Jim and Carol own a rental property, which they bought in 1993 for \$100,000. Over the years, they have taken \$15,000 in depreciation deductions, so the property's adjusted tax basis is now \$85,000. They sell the property in 1998 for \$150,000, realizing a \$65,000 long-term capital gain ( $\$150,000 - \$85,000 = \$65,000$ ). Assuming Jim and Carol are in the 35% tax bracket, \$15,000 of their gain (the amount of the depreciation they have taken) will be taxed at 25%. The rest of their gain (\$50,000) will be taxed at the lower rate of 15%.

To find the financial value of rental real estate, you will need to know the following:

\$ \_\_\_\_\_ *Fair Market Value*

Single-family homes are somewhat easier to value than commercial, industrial, or multifamily dwellings. For single-family residential real estate, you can ask several real estate agents or appraisers for current comparable values. With other types of rental units, however, you will need to consult an appraiser or a broker who specializes in evaluating the type of property you have. See Chapter 13 for information on finding an appraiser.

An appraiser will use one—or a combination—of these three recognized calculations:

**Cost Approach.** The fair market value equals the amount it would cost to replace a building, plus the land's value. This approach usually applies to single-family dwellings.

**Market Data Approach.** Also used with single-family dwellings, this approach compares properties that all provide similar cash flows to determine the fair market value.

**Income Approach.** The fair market value is based on the cash flow a building currently generates plus an estimate of the amount it will generate in the future. Commercial, industrial, and multifamily dwellings are often appraised with this approach.

Ask the appraiser which approach is being used to value your property—and why. Just as a retirement plan can be worth different amounts when appraisers use different assumptions, so too can real estate values vary when different approaches are used. Avoid disputes by making sure you, your spouse, or your appraisers are basing the fair market value on the same types of calculations.

| Real Estate Values                      |                   |                          |                            |                          |
|-----------------------------------------|-------------------|--------------------------|----------------------------|--------------------------|
| Property Address or Description         | Fair Market Value | Current Debt on Property | Total Capital Improvements | Total Depreciation Taken |
| Rental house, 323 Third Street, Rye, NY | \$100,000         | \$60,000                 | \$20,000                   | \$40,000                 |
| Duplex, Sun Court, Surf City, CA        | \$280,000         | \$100,000                | \$0                        | \$32,000                 |
|                                         | \$                | \$                       | \$                         | \$                       |
|                                         | \$                | \$                       | \$                         | \$                       |
|                                         | \$                | \$                       | \$                         | \$                       |

When you know the fair market value of your properties, use the chart below to keep track of those values. Write the address or the description by which you and your spouse will refer to the property in the first column, and the fair market value in the second column. The remaining columns will be addressed as you continue reading this section.

\$ \_\_\_\_\_ *Debt on Property*

The debt connected to real estate equals what you owe to any lenders (mortgages) plus any liabilities (liens) on the house. All liabilities must be paid before any cash disbursements can be made from the sale of real

estate. The mortgage due is sometimes called the “payoff balance.”

To find the current debt on the house, talk to your lender and check the property’s title for any liens you’re unaware of. (See Chapter 13.) List the debt in Column 3 of the *Real Estate Values* chart.

\$ \_\_\_\_\_ *Total Capital Improvements or Depreciation*

To find total capital improvements made or depreciation taken on rental properties, check your records or previous tax returns, or talk to your accountant or tax advisor. List the totals in the fourth column of the *Real Estate Values* chart.

\$ \_\_\_\_\_ *% Your Tax Bracket*

By now, you have probably established your tax bracket, either by checking income tax schedules or talking with your accountant. You will need this information in the upcoming formula.

\$ \_\_\_\_\_ *Cost of Sale*

In calculating how much money it takes to actually sell your rental property, you can do a quick ballpark estimate, or you can follow these steps to find as precise a figure as possible. To find this number, you’ll have to include not only the costs of sale, but also the amount it will take to fix up the property and prepare it for a sale.

To get a ballpark estimate of the sales cost, multiply the fair market value by .07. This is an accepted estimate of what it costs to sell a house. Obviously, some sales will yield higher or lower costs of sale, but 7% will do.

To obtain a more accurate cost-of-sale figure, total the following amounts:

\$ \_\_\_\_\_ *Agent’s Commission*

The amount a real estate agent charges you for selling property. Generally, it averages 6% of the final selling price. This fee can sometimes be negotiated down.

\$ \_\_\_\_\_ *Closing Costs*

Included in these costs are escrow fees, recording costs, appraisal fees, and miscellaneous expenses that can add up to thousands of dollars. A lender or real estate agent can help you figure the exact amount.

\$ \_\_\_\_\_ *Attorney's Fees*

In a few states, you will need to hire an attorney to help you “close” the sale of real property. If you used an attorney when you bought the property, base your figure on that amount, taking into account the fact that most lawyers raise their fees over time. Otherwise, ask a real estate agent for an estimate.

\$ \_\_\_\_\_ *Fix-Up Costs*

Estimate here the amount of money you will have to spend to prepare the property for sale.

Now add all of these figures and fill in the cost of sale.

To find the financial or after-tax/after-sale value of rental real estate, use this formula:

1. Find the equity by subtracting the debt from the fair market value.
2. Find the tax basis by adding total capital improvements to the purchase price and then subtracting total depreciation taken.
3. Find the adjusted sales price by subtracting the cost of sale from the fair market value.
4. Find the gain (or loss) on the potential sale of the property by subtracting the tax basis from the adjusted sales price. If you experienced a loss, you may have no tax liability and be able to offset other gains with your loss to reduce your taxes due.
5. Determine the portion of gain related to depreciation taken. That portion will be taxed at 25%, while the remainder of the gain will be taxed at either 15% (if you are in a tax bracket above 15%) or 5% (if you are in the 15% tax bracket).
6. Find the financial or after-tax/after-sale value by subtracting cost of sale from the equity and then subtracting the taxes due.

**EXAMPLE:**

1. Find the equity by subtracting the debt from the fair market value.

$$\begin{array}{r r r} \textit{Fair Market Value} & & \$100,000 \\ \textit{Debt} & - & \underline{60,000} \\ \textit{Equity} & = & \$ 40,000 \end{array}$$

2. Find the tax basis by adding total capital improvements to the purchase price and then subtracting total depreciation taken.

$$\begin{array}{r r r} \textit{Purchase Price} & & \$ 50,000 \\ \textit{Total Improvements} & + & \underline{5,000} \\ & = & 55,000 \\ \textit{Total Depreciation} & - & \underline{12,500} \\ \textit{Tax Basis} & = & \$ 42,500 \end{array}$$

3. Find the adjusted sales price by subtracting the cost of sale from the fair market value.

$$\begin{array}{r r r} \textit{Fair Market Value} & & \$100,000 \\ \textit{Cost of Sale} & - & \underline{7,000} \\ \textit{Adjusted Sales Price} & = & \$ 93,000 \end{array}$$

4. Find the gain (or loss) on the potential sale of the property by subtracting the tax basis from the adjusted sales price.

$$\begin{array}{r r r} \textit{Adjusted Sales Price} & = & \$ 93,000 \\ \textit{Tax Basis} & - & \underline{42,500} \\ \textit{Gain (or Loss)} & = & \$ 50,500 \end{array}$$

5. Find the taxes due by multiplying the depreciation portion of the gain by 25% and the remaining gain by 15% (assuming you are in the 25%+ tax bracket). Total these numbers for the taxes due.

|                               |   |               |
|-------------------------------|---|---------------|
|                               |   | \$12,500      |
|                               | x | <u>25%</u>    |
| <i>Gain From Depreciation</i> |   | \$ 3,125      |
|                               |   | \$49,500      |
|                               | – | <u>12,500</u> |
| <i>Remaining Gain</i>         |   | \$37,000      |
|                               | x | <u>15%</u>    |
|                               |   | \$5,500       |
|                               |   | \$3,125       |
|                               | + | <u>5,500</u>  |
| <i>Taxes Due</i>              |   | \$8,675       |

6. Find the financial or after-tax/after-sale value by subtracting cost of sale from the equity and then subtracting the taxes due.

|                                   |   |               |
|-----------------------------------|---|---------------|
| <i>Equity</i>                     |   | \$ 40,000     |
| <i>Cost of Sale</i>               | – | 7,000         |
| <i>Taxes Due</i>                  | – | <u>13,860</u> |
| <i>Financial or</i>               |   |               |
| <i>After-Tax/After-Sale Value</i> | = | \$ 19,140     |

To apply this formula to your situation, fill in the blanks below:

1. Find the equity by subtracting the debt from the fair market value.

|                          |   |          |
|--------------------------|---|----------|
| <i>Fair Market Value</i> |   | \$ _____ |
| <i>Debt</i>              | – | \$ _____ |
| <i>Equity</i>            | = | \$ _____ |

2. Find the tax basis by adding total capital improvements to the purchase price and then subtracting total depreciation taken.

|                           |   |          |
|---------------------------|---|----------|
| <i>Purchase Price</i>     |   | \$ _____ |
| <i>Total Improvements</i> | + | \$ _____ |
|                           | = | \$ _____ |
| <i>Total Depreciation</i> | - | \$ _____ |
| <i>Tax Basis</i>          | = | \$ _____ |

3. Find the adjusted sales price by subtracting the cost of sale from the fair market value.

|                             |   |          |
|-----------------------------|---|----------|
| <i>Fair Market Value</i>    |   | \$ _____ |
| <i>Cost of Sale</i>         | - | \$ _____ |
| <i>Adjusted Sales Price</i> | = | \$ _____ |

4. Find the gain (or loss) on the potential sale of the property by subtracting the tax basis from the adjusted sales price.

|                             |   |          |
|-----------------------------|---|----------|
| <i>Adjusted Sales Price</i> |   | \$ _____ |
| <i>Tax Basis</i>            | - | \$ _____ |
| <i>Gain (or Loss)</i>       | = | \$ _____ |

5. Find the taxes due by multiplying the depreciation portion of the gain by 25% and the remaining gain by 15% (assuming you are in the 25%+ tax bracket). Total these numbers for the taxes due.

|                               |   |            |
|-------------------------------|---|------------|
|                               |   | \$ _____   |
|                               | x | <u>25%</u> |
| <i>Gain From Depreciation</i> |   | \$ _____   |
|                               |   | \$ _____   |
|                               | - | \$ _____   |
|                               |   | \$ _____   |
|                               | x | <u>15%</u> |
| <i>Remaining Gain</i>         |   | \$ _____   |
|                               |   | \$ _____   |
|                               | + | \$ _____   |
| <i>Taxes Due</i>              |   | \$ _____   |



6. Find the financial or after-tax/after-sale value by subtracting cost of sale from the equity and then subtracting the taxes due.

|                                   |   |          |
|-----------------------------------|---|----------|
| <i>Equity</i>                     |   | \$ _____ |
| <i>Cost of Sale</i>               | – | \$ _____ |
| <i>Taxes Due (or Tax Refund)</i>  | – | \$ _____ |
| <i>After-Tax/After-Sale Value</i> | = | \$ _____ |

### Who Pays the Rent

If you or your spouse moves from the family home, you can make temporary arrangements for paying the mortgage and other bills. But what if you own rental property and the renters move? Who will pay the mortgage? Or suppose you and your spouse decide to sell the property. Who will pay for repairs? Who will be reimbursed for capital improvements to the property? You and your spouse must settle these questions. If you pay these costs alone, keep good records of every expense so that you will have a chance to get reimbursed as part of the final settlement.

### Insurance

Buying more insurance than you need and paying too much in insurance premiums are common mistakes. At divorce, you have the opportunity to take a good look at your policies and correct these mistakes if necessary.

Whole life or universal life insurance not only provides income in the event of someone's death, but also has some investment benefits, although these benefits may be minimal compared with other investments. As you pay your premiums, a cash reserve builds up. This reserve increases over and above the premiums you pay because you earn interest on your premiums. The reserve also grows because the expenses, such as commissions paid to brokers, decrease over time. Be aware, though, that the cash value decreases if you borrow money against the policy.

Term policies, on the other hand, provide death benefits only. They have no cash buildup and therefore have no growth potential.

Keep only those policies you truly need for insurance. Never surrender an essential policy or let it lapse without having replacement insurance, but do get rid of unnecessary policies. Life insurance companies select policyholders with care. If you have to apply for insurance in the future, you may be denied coverage because of a yet-unknown health problem. Keep in mind, however, if you surrender policies with cash value—that is, you turn them in and collect the cash—you will have to pay taxes on the interest earned. You figure the interest by subtracting the total premiums paid and the surrender charges from the cash value. The difference is the interest, and that amount is what you'd have to report to the IRS as income.

### **Annuities**

Annuities are investments offered by insurance companies that are meant to provide income at retirement. Annuities are discussed in Chapter 14.

### **Cash Value Policies**

Any policy with a cash value is often called, logically enough, a “cash value policy.” If you decide that your policy is not the most cost-effective for you, you can use the cash value to purchase another insurance policy that is more suitable. The benefit of buying another policy rather than taking the cash out of your current policy is that you can defer the taxes you would owe on the accrued interest. (Internal Revenue Code § 1035.) The only drawback is that you will have to pay a commission when you purchase the new policy, and these costs will decrease the initial cash value of the new policy.

To quickly estimate the financial value of your insurance (a detailed analysis is not necessary), you need to obtain the following:

\$ \_\_\_\_\_ *Cash Value*

Take a look at the most current policy statement and see if it shows the cash value. If it doesn't, ask your insurance agent.

\$ \_\_\_\_\_ *Surrender Charges*

Again, this information should be on the current policy, or you can get it by checking with your agent.

\$ \_\_\_\_\_ *Premiums Paid*

| Value of Insurance Policy               |           |             |
|-----------------------------------------|-----------|-------------|
|                                         | Example   | Your Policy |
| Cash Value                              | \$ 10,000 |             |
| Surrender Charge                        | – 500     |             |
| Cash Surrender Value                    | \$ 9,500  |             |
| Cash Surrender Value                    | \$ 9,500  |             |
| Premiums Paid                           | – 6,000   |             |
| Gain (or Loss)                          | \$ 3,500  |             |
| Gain (or Loss)                          | \$ 3,500  |             |
| Tax Bracket                             | x .25     |             |
| Taxes Due                               | \$ 875    |             |
| Cash Surrender Value                    | \$ 9,500  |             |
| Taxes Due                               | – 875     |             |
| Financial or After-Tax/After-Sale Value | \$ 8,625  |             |

Check the most current policy statement or ask your agent.

Following the example in the *Value of Insurance Policy* chart, below, use the formula shown to find the financial or after-tax/after-sale value on cash value insurance policies.

## Limited Partnerships

You may have difficulty finding an accurate value for your interests in a limited partnership. It's often hard to tell how much was invested and how much has been received in tax benefits (write-offs). We do not provide detailed information on figuring the financial value of limited partnerships. Instead, we urge you to consult your accountant to get an understanding of the value of these assets and to ask your broker for information on companies that specialize in secondary market sales of limited partnership units.

Also, call the general partner (and any other limited partners) to find out everything you can about the partnership, especially its economic health. Be alert to these potential problems with limited partnerships:

- You may not be able to divide your interest. General partners may not be willing to divide the investment in the limited partnership between you and your spouse. If you can't divide your interest, and neither of you wants to give up your interest to the other in exchange for other property, be sure you and your ex-spouse have a carefully written agreement about how taxes, bookkeeping, and distribution checks will be handled after the divorce.
- A limited partnership can generate taxable income that you never receive, called phantom income. Ask the general partner whether phantom income is expected and how much of this income will be taxable.
- Some limited partnerships make requests for additional investments (called capital calls) from the limited partners. Before keeping a limited partnership, check the original investment document, contact your accountant, or ask the general partner if you may be liable for additional investments.
- All limited partnerships are risky investments, because the general partner has almost complete control over the assets of the partnership. A general partner's decision to sell an asset or allow a foreclosure can create a tax liability for you. You might call your broker or the general partner to determine when the sale of assets in the partnership is anticipated and what the tax consequences would be.
- Bookkeeping can be difficult. When the partnership sends out its IRS reporting form (K-1) each tax year, it sends only one form to each investor. The partnership usually sends only one distribution check as well. If you and your spouse are unable to divide the partnership interest, then only one of you will receive the form and the check. You need to agree on who that will be and how you'll handle it—for example, what the deadline will be for the spouse who receives the check and information to pass along the other spouse's share.

Unless you've been lucky, limited partnerships are more trouble to keep after divorce than they are usually worth.

## **Collectibles**

Your biggest problem in determining the financial value of collectibles (like art, special plates, or even baseball cards) will be finding a valuation on which you and your spouse can agree. You may hear any number of conflicting values depending on who is making the appraisal.

To find the financial value of collectibles, first list the following:

\$ \_\_\_\_\_ *Purchase Price*

Check original receipts, look at old tax returns, or consult with a broker.

\$ \_\_\_\_\_ *Acquisition Costs*

Did you drive to a distant city to buy the piece? Stay overnight in a hotel? Pay admission to an antique fair? Any or all of these could add to the taxable cost basis of the antique, meaning you'll owe less tax on it when sold.

\$ \_\_\_\_\_ *Improvements*

Did you restore the piece or do anything to it—such as reupholstering, refinishing, or refurbishing—that increased its value?

\$ \_\_\_\_\_ *Selling Price or Wholesale Value*

Ask a dealer, auctioneer, or consignment shop to give you an estimate of the wholesale value of your holdings. Many people mistakenly assume that some items, such as diamonds, are worth a great deal because they consider only the retail value. But jewelers buy loose diamonds at wholesale prices and will not pay you more than that price when they buy from you.

\$ \_\_\_\_\_ *Commissions*

Talk with a broker, a wholesaler, or anyone familiar with the market for your item. With collectibles, the commission is as high as 30% of the sale price.

\$ \_\_\_\_\_ % *Tax Bracket*

Consult an accountant or previous tax schedules.

To find the financial or after-sale/after-tax value of collectibles, use this formula:

1. Find tax basis by adding commissions (paid at purchase), acquisition costs, improvements, and purchase price.
2. Find adjusted sale price by subtracting commissions (due at sale) from the selling price or wholesale value.

3. Find gain (or loss) by subtracting the tax basis from the adjusted sales price.

If you incur a loss on this asset, you can net it against a gain on another asset and thereby reduce your capital gains tax liability.

4. Find taxes due by multiplying the gain times the capital gains tax rate of 15%.
5. Find the financial value by subtracting (or adding) taxes due (or tax benefit) from (or to) the adjusted sale price.

**EXAMPLE:** Janet and Tom purchased a painting during their marriage that they now wanted to sell. It had gone down in value, so they had a loss they could net against other gains.

1. Find tax basis by adding commissions (paid at purchase), acquisition costs, improvements, and purchase price.

|                          |   |                   |
|--------------------------|---|-------------------|
| <i>Purchase Price</i>    |   | <i>\$10,000</i>   |
| <i>Acquisition Costs</i> | + | <i>250</i>        |
| <i>Improvements</i>      | + | <i>250</i>        |
| <i>Commissions</i>       | + | <i><u>500</u></i> |
| <i>Tax Basis</i>         | = | <i>\$11,000</i>   |

2. Find adjusted sale price by subtracting commissions (due at sale) from the selling price or wholesale value.

|                                         |   |                   |
|-----------------------------------------|---|-------------------|
| <i>Selling Price or Wholesale Value</i> |   | <i>\$ 7,000</i>   |
| <i>Commissions</i>                      | - | <i><u>500</u></i> |
| <i>Adjusted Sales Price</i>             | = | <i>\$ 6,500</i>   |

3. Find gain (or loss) by subtracting the tax basis from the adjusted sales price.

|                             |   |                      |
|-----------------------------|---|----------------------|
| <i>Adjusted Sales Price</i> |   | <i>\$ 6,500</i>      |
| <i>Tax Basis</i>            | - | <i><u>11,000</u></i> |
| <i>Gain (or Loss)</i>       | = | <i>\$(4,500)</i>     |

4. Find taxes due by multiplying the gain times the capital gains tax rate of 15%.

|                               |   |                   |
|-------------------------------|---|-------------------|
| <i>Gain (or Loss)</i>         |   | <i>\$(4,500)</i>  |
| <i>Capital Gains Tax Rate</i> | x | <i><u>15%</u></i> |
| <i>Taxes Due (or Benefit)</i> | = | <i>\$(675)</i>    |

5. Find financial value by subtracting the tax benefit from the adjusted sale price.

$$\begin{array}{r r r}
 \text{Adjusted Sales Price} & & \$ 6,500 \\
 \text{Taxes Due (or Benefit)} & - & (\$675) \\
 \text{Financial Value} & = & \$ 7,175
 \end{array}$$

If loss is not netted against gains, you can only use up to \$3,000 in losses in one year. So you would carry forward the \$1,500 (\$4,500 loss – \$3,000 = \$1,500) to the next year.

To apply this formula to your situation, fill in the blanks below:

1. Find tax basis by adding commissions (paid at purchase) and purchase price.

$$\begin{array}{r r r}
 \text{Purchase Price} & & \$ \underline{\hspace{2cm}} \\
 \text{Commissions} & + & \$ \underline{\hspace{2cm}} \\
 \text{Tax Basis} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

2. Find adjusted sale price by subtracting commissions (due at sale) from the selling price or wholesale value.

$$\begin{array}{r r r}
 \text{Selling Price or} & & \\
 \text{Wholesale Value} & & \$ \underline{\hspace{2cm}} \\
 \text{Commissions} & - & \$ \underline{\hspace{2cm}} \\
 \text{Adjusted Sales Price} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

3. Find gain (or loss) by subtracting the tax basis from the adjusted sales price.

$$\begin{array}{r r r}
 \text{Adjusted Sales Price} & & \$ \underline{\hspace{2cm}} \\
 \text{Tax Basis} & - & \$ \underline{\hspace{2cm}} \\
 \text{Gain (or Benefit)} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

4. Find taxes due by multiplying the gain times the capital gains rate of 15%.

$$\begin{array}{r r r}
 \text{Gain} & & \$ \underline{\hspace{2cm}} \\
 \text{Capital Gains Tax Rate} & \times & \underline{\hspace{2cm}} 15\% \\
 \text{Taxes Due (or Benefit)} & = & \$ \underline{\hspace{2cm}}
 \end{array}$$

5. Find financial value by subtracting the taxes due or benefit from the adjusted sale price.

|                             |   |          |
|-----------------------------|---|----------|
| <i>Adjusted Sales Price</i> |   | \$ _____ |
| <i>Taxes Due</i>            | – | \$ _____ |
| <i>Financial Value</i>      | = | \$ _____ |

## Which Assets Should You Keep?

Once you know the financial (or after-tax/after-sale) value of investments, you have a starting point for negotiating with your spouse. The values are useful whether you want to sell your assets to the person you're divorcing, buy them for yourself, or divide them between you.

The ultimate decision to keep or sell an investment depends on many factors including your age, risk tolerance, income needs, and investment experience. Asking yourself the following simple questions will help you make sound decisions about your investments.

1. *Has this investment performed well?*

If Yes, go to Question 2.

If No, consider these options:

- Sell the asset before the divorce so you and your soon-to-be-ex-spouse share costs of sale, taxes, and other expenses.
- Take the asset for yourself, but only if it provides you with the benefit of a tax loss. That is, it can offset a gain you may have on another asset. You should consult a tax expert to determine your need to take any losses.
- Offer to sell the asset to your spouse in the divorce settlement.

2. *Is this investment appropriate for me—is it providing the income, growth, liquidity, or security I need?*

If Yes, how long do you plan to keep it?

- Long term—buy out your spouse's interest and keep this investment.
- Short term—consider selling before your divorce becomes final, sharing the proceeds, taxes, and other costs with your spouse, and then using the proceeds to purchase a similar investment.

If No, consider these options:

- Sell before your divorce is final, sharing the proceeds, taxes, and other costs with your spouse.



- Buy out your spouse and sell immediately to take advantage of tax losses.
- Let your spouse buy out your share or interest in the investment.

## How Will You and Your Spouse Divide the Investments?

You are now ready to prepare your position for negotiating over investment assets. Look at the *Investment Chart* you completed earlier in this chapter and use it to show how investments will be handled in your divorce.

For each investment listed in Column 1, put a check mark in one of the last three columns to show if you intend to keep the asset, have your spouse keep it, or sell it and split the proceeds. If you have cash value life insurance or rental property, be sure to read the sections that follow before making a final decision about these assets.

## Special Problems With Cash Value Life Insurance

The financial value of the policy isn't the only consideration with cash value life insurance. Be sure to consider the following before choosing to keep this asset in your divorce:

- What is the quality of the insurance company? You may be able to evaluate the quality of an insurance company by checking its ratings by one of the three main rating services, Standard and Poor's, Moody's, and A.M. Best. But these ratings provide no guarantees. Before it folded in 1990, for example, Executive Life received an A+ rating from Best, considered the top rating company.
- What interest rate are you receiving on the premiums accruing as your cash value? Would alternative—yet safe—investments, such as corporate bonds, municipal bonds, or federal government bonds, yield you more?
- Are there any loans outstanding on the policy? If so, the amount paid at death will be reduced by the outstanding loan. Before taking this asset at divorce, be sure the loans are paid back so the full amount is paid, or recognize that the death benefits will be reduced.

## Special Problems With Rental Property

The financial value of the property isn't the only consideration with rental property. Be sure to ask yourself the following questions before choosing to keep this asset in your divorce:

- Where is the property located? Is it on a busy street? On the beach? Given its location, what is its potential for appreciation?
- What is the quality of the neighborhood? Is it improving or deteriorating?
- How will the property be affected by changes in the local economy?
- Are newer and nicer buildings directly competing for your renters?
- Are your rents above or below market?
- What does it cost to maintain and manage the property? Is your cash flow positive or negative? Can you afford the property when renters vacate and the income is down?
- What are the tax incentives or disincentives to keeping the property?
- What would it cost to improve the property?
- How much income can you expect the property to generate?
- When might you sell? Can you determine your rate of return over that time?
- What is the vacancy rate?
- What kind of loan do you have—fixed or adjustable rate? If it's adjustable and interest rates rise, can you still afford it?

Your answers will help you reach one of three conclusions:

1. The property has strong potential (the location is great, there's little rental competition, operating costs and vacancy rates are low) and it should appreciate faster than other investments I could make using the same amount of money.

*It would be a good asset to keep.*

2. The property has some potential, but it's uncertain. Other investments using the same amount of money may outperform this one.

*We should probably sell now and split the proceeds, or my spouse can take it.*

3. This property has little potential (operating costs are high, the location is bad, and/or vacancy rates are high) and other investments have a higher probability of meeting my needs.

*We should probably sell now and split the proceeds, or my spouse can take it.*



Now review all your investments—stocks, bonds, rental real estate, limited partnerships, and others—and write your decisions on the *Investment Chart* at the beginning of this chapter. ■

# Evaluating Employee Benefits and Stock Options

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|                                                               |     |
|---------------------------------------------------------------|-----|
| Employee Benefits.....                                        | 316 |
| Health Insurance .....                                        | 317 |
| Group Term Life Insurance.....                                | 318 |
| Accidental Death or Dismemberment Insurance.....              | 318 |
| Health Savings Accounts .....                                 | 318 |
| Dependent Care Assistance Programs.....                       | 319 |
| Cafeteria Plans .....                                         | 319 |
| Severance Plans.....                                          | 320 |
| Educational Assistance Programs .....                         | 320 |
| Group Legal Services.....                                     | 320 |
| Employee Assistance Programs .....                            | 321 |
| Stock Options and Nonqualified Deferred Compensation Plans... | 321 |
| Types of Stock Options .....                                  | 322 |
| What Are Stock Options Worth at Divorce? .....                | 326 |
| Nonqualified Deferred Compensation Plans.....                 | 329 |
| Questions to Ask an Attorney or Tax Specialist .....          | 330 |

*As companies get more creative in compensating their employees, the stakes are raised in the divorce process.*

**T**oday's employees receive more than what shows up on the pay stub or tax form. Benefits such as stock options, insurance, retirement plans, and other fringes are forms of compensation. And to the extent they can be considered income to you or your spouse, they can help determine how much spousal and child support you are eligible to receive, or must pay.

For divorce purposes, the key question is whether to classify various types of employee compensation as:

- **income**—a continuing source of money that can affect decisions about alimony and child support
- an **asset**—property of some sort that can be apportioned between the spouses in the settlement
- neither income nor an asset, or
- both. (For more on the distinction between income and assets, see Chapter 12.)

This chapter looks at different forms of employee compensation in light of their value to you and your spouse in the divorce process.

## Employee Benefits

Employee benefits (also known as nonwage compensation) have mushroomed in recent years as companies and nonprofit organizations have sought to attract and retain employees. Start-up businesses, especially, use nonwage compensation because they may not yet generate the cash to pay competitive salaries. Employee benefits include retirement plans, both pension plans and deferred compensation plans; insurance coverage; disability and death benefits; employee assistance plans; educational assistance; and perks such as company cars, health club memberships, and discounts at stores or hotels.

From the standpoint of divorce law, this area is far from settled. Courts can and do disagree about how to classify particular benefits at divorce. One court may say that use of a company car lowers an employee's living expenses, freeing up more money for spousal and child support; another

may not. So it's important to talk to your attorney about the role that employee benefits may play in your case.

Various types of retirement plans, employer-sponsored and otherwise, are explained in Chapter 14. In the following sections, we provide an overview of other common employee benefits and how they could affect your divorce settlement. The question that's usually at issue is whether a particular benefit can be considered taxable (or gross) income. If so, a court may take it into account in determining levels of child and spousal support. In other instances, a benefit may be regarded as a marital asset—something that gets allocated between spouses at the time of divorce.

## Health Insurance

The employee benefits that most affect day-to-day living are in the insurance area. Medical insurance, especially, is one of the most important benefits that are subject to a divorce court's powers. Health insurance can also cover prescriptions, therapy, dental and vision care, and the like.

Many health insurance plans provide benefits through an insurance company or a health maintenance organization (HMO). Other plans are paid directly by the employer (known as “self-funded” or “self-insured” plans).

An employer's contributions for health insurance are *not* considered taxable income to the employee. Nor does an employee report as taxable income amounts paid by the insurance company for covered medical expenses.

A court may order a parent to provide health coverage for children as part of a child support order (see Chapter 18). But this benefit is not considered an asset that needs to be divided at divorce.

## Disability Plans

These plans protect employees against the risk that illness or injury will interrupt their ability to work. Typically, the employer offers coverage for disability under an accident or health plan.

Usually, the employer's contribution is excluded from the employee's gross income on the tax return. In the event of disability, however, amounts the employee receives are included as gross income.

Employer-sponsored disability insurance is not an asset to be divided between spouses at divorce. But a contribution paid by the employer may be factored into the court's calculation of child and spousal support.

### **Group Term Life Insurance**

This is an insurance policy carried by an employer to provide death benefits for employees and, occasionally, for retirees. Unless an employee is upper management, this insurance is generally available only during the term of employment.

The employee generally excludes from taxable income the employer's contribution to the premium up to \$50,000. In the event of death, the beneficiary is not taxed on the death benefits received.

Group term life insurance is not an asset that a court divides. However, the court may order a party to maintain all employer-provided life insurance, naming a former spouse or children as the beneficiary (see Chapter 10).

### **Accidental Death or Dismemberment Insurance**

Again, employer contributions to premium payments and insurance proceeds received by the employee are excluded from the employee's income. If the employee pays the premium, the amount paid may be a factor the court considers in a child support order; however, the policy itself is not an asset to divide.

### **Health Savings Accounts**

A Health Savings Account (HSA) is a tax-advantaged medical savings account to which contributions may be made by employers, employees, or both. Funds in an HSA account may be invested in a manner similar to a 401(k) account or an IRA. Those funds later can be withdrawn tax-free for qualified medical expenses, such as deductibles, coinsurance, dental, vision, and chiropractic care, and other items not necessarily covered under a traditional health insurance plan.

Each HSA account must be combined with a separate catastrophic health insurance policy with a high deductible. Medical expenses must hit \$1,050 for an individual and \$2,100 for a family before coverage kicks in. Once the deductible is met, the insurance usually covers 100% of health care costs.

The idea is that Americans will consume less care and be more vigilant about health care costs if they see a relationship between medical costs and their bank accounts.

Unused funds can be rolled over into the next year's account. (HSAs, which were launched in 2004, effectively replace medical savings accounts, or MSAs, because employers of all sizes can offer HSAs while MSAs were limited to employers of 50 or fewer workers.)

There's some controversy about whether HSAs favor high-income individuals and some dispute over how quickly employers are adopting HSA plans. But there's no doubt that payments the employer makes to the plan are not included in the employee's gross income, and if an employee contributes, that contribution is deductible from gross income on tax returns. Thus, these accounts have the potential to accumulate significant balances over years of contributions and investment gains.

Any amount in an employee spouse's account on the date of separation or divorce is an asset assigned to the employee spouse. The employee spouse can be ordered to pay existing marital medical expenses with money on deposit. (See Chapter 10 for a discussion of retaining health care coverage through a spouse's employer.)

## **Dependent Care Assistance Programs**

Dependent care programs provide child care or related services for employees who need this help in order to work. Frequently, employers offer child care benefits as a choice under a cafeteria plan (see below). The program may offer direct payments to the employee, or it may involve an employer-sponsored child care center.

The employee's gross income does not include amounts contributed by the employer. This benefit is not subject to division as an asset. But the court may consider the program's value as compensation and may order an employee to provide this benefit as part of a child support order.

## **Cafeteria Plans**

Cafeteria plans offer participants a choice of certain benefits—such as medical insurance, group term life, disability insurance, and child care—or cash. Employees may also be given the option under a cafeteria plan to use, sell, or buy additional vacation days.

Typically, in a cafeteria plan the employee elects before the beginning of the year to have his or her salary reduced. The amount of the reduction is then applied to the employee's share of the insurance premium or to cover other expenses such as child care.

The value of the benefits the employee receives is excluded from the employee's gross income. But any cash the employee receives under the plan is included in gross income.

## **Severance Plans**

Severance involves payments made to an employee when he or she is terminated by the employer. Whether written or informal, severance plans have two goals: to reward an employee's past service and to help the employee make ends meet during retraining or a job search. Sometimes an employer offers severance pay in exchange for the employee's promise not to sue for wrongful termination.

Severance plans, where they exist, vary from employer to employer. Some offer one week's pay for each year of service. Others have a more generous "golden parachute" policy, typically for executives. Eligibility for severance and the amount received often depend on the employee's position in the firm as well as length of service.

Severance may be paid in a lump sum, periodic payments, or a combination of the two. Generally, severance payments are included in gross income.

## **Educational Assistance Programs**

These programs reimburse employees for tuition, fees, and attendance at outside educational programs or institutions or provide tuition and fees for in-house seminars. Courses need not be related to a person's work. Such expenses paid for by an employer are not included in an employee's gross income.

## **Group Legal Services**

These plans offer employees low-cost legal services such as referrals, advice, and representation. They allow a group to use its collective purchasing power to negotiate lower rates from lawyers.



The employer and/or the employee pays for the cost through union dues or payroll deductions. Participation may be automatic or voluntary, and a plan may be offered independently or through a cafeteria plan.

The benefits received under group legal services plans used to be excluded from employees' income. That's no longer the case; employees must now pay taxes on any such benefits received.

## **Employee Assistance Programs**

These programs cover a variety of services for employees and their families, including help for drug and alcohol abuse, stress, anxiety, depression, family problems, money and credit problems, and legal problems. Usually, employers contract with a third party to provide counseling and referral services with a social worker or family counselor.

Benefits or reimbursements an employee receives under an employee assistance program may or may not be included in gross income, depending on the nature of the benefit and the employee's income level. Particular employers should be able to provide information on the tax consequences of benefits offered under the program.

## **Stock Options and Nonqualified Deferred Compensation Plans**



If neither you nor your spouse has stock options, stock incentives, or nonqualified deferred compensation plans (a kind of benefit usually reserved for upper management), skip ahead to the next chapter.

Stock options and other kinds of corporate incentive and compensation programs present a challenge for divorcing spouses who are trying to sort out and take control of their finances—not just because the plans themselves can be complicated, but also because there's still a lot of uncertainty over how to deal with them in the divorce process.

This section provides an overview of different kinds of plans and explains some key terms that come up in this area. If you or your spouse has such benefits, questions to keep in mind are:

- How much is the benefit worth now?
- Is the benefit something that can be divided between spouses?
- Can the benefit be transferred from one spouse to the other?
- Is the benefit considered income?
- If so, will a court take it into account in calculating alimony and/or child support?

In many cases, there are no sure answers. But you need to be aware of these issues so that you can raise them with your attorney and factor them into your negotiations.



If you or your spouse has stock options or other types of compensation covered in this section, you should discuss this with your divorce lawyer and also with a tax attorney or certified public accountant. Many tax considerations can be involved.

## **Types of Stock Options**

Stock options are an important part of the compensation program of many corporations. The aim, in addition to compensating employees, is to encourage employees to work hard to achieve success for the firm and thus increase the value of the company's stock.

Stock options have been common perks for senior management for many years. But in recent years stock options have become part of the compensation package of many rank-and-file workers. It's estimated that about 10% of all employees now own stock options; in technology companies, the figure is about 50%.

A stock option is a right granted to an employee to purchase a certain number of shares in the company's stock at today's price sometime in the future. The stock purchased can be sold later, when the market value may be higher.

Usually, the employee cannot exercise the right to purchase and sell stock as soon as he or she receives it. Instead, the employee must remain with the firm for a minimum period before the options vest (that is, become exercisable). When they do vest, the stock's market value presumably will have risen, thus giving the employee an automatic profit in return for having stayed with the firm through the vesting period.

As a result, employees can find themselves with potential wealth tied up in an employer's option plan. In fact, options nationally are said to represent about \$1 trillion in unexercised wealth. But there is also great risk in unexercised options. That's because while the expectation is that the value of the stock will go up, sometimes it goes down quickly and significantly.

Thus, while stock options are an increasingly common marital asset and often an item in contention in a divorce, they can entail substantial losses as well as gains. A divorcing spouse may have to pay additional support when his or her options go up in value, but receive no relief if they go down.

Option plans are complex, and they differ from company to company. What's more, divorce courts differ greatly on how to value options, what portion—if any—of them should be characterized as marital property, and how to treat them for purposes of support.

### **Stock Option Documents You Need to Get**

To determine what kind of stock options are involved in your case, you should obtain as much information on the options as possible. Much of this information can be obtained from the employer that granted the options. Important documents include:

- the original stock option plan statement and all amendments
- grant agreements between employer and employee (there will be one for each grant)
- employer's letter of intent to employee offering a stock option contract
- an option summary statement reflecting the status of each grant, including vesting, exercise, and sales as well as changes in the number of shares resulting from stock splits (generally, the employer provides such statements annually or quarterly)
- a list of the company's monthly stock prices and dividend payments (if it's a publicly traded firm), and
- all SEC Form 10K filings, annual proxy statements, or other filings with any governmental or regulatory agency during the term of employment. (These often are available at the EDGAR website at [www.sec.gov](http://www.sec.gov); look under the EDGAR heading. EDGAR stands for Electronic Data Gathering Analysis and Retrieval, an information system of the Securities and Exchange Commission.)

## Stock Option Lingo

Even to the most sophisticated investors, stock options can be confusing. Here are simple definitions of some of the key concepts:

- **Stock option.** A contractual right, not an obligation, to buy a certain number of shares (exercise the option) at a point in the future (the vesting date) at a specific price (the grant price).
- **Grant.** The issuance by an employer of the right to acquire stock at a specific time in the future at a predetermined price.
- **Grant price.** The price at which the shares are purchased when the option is exercised, regardless of their market price when exercised. Also known as strike price, option price, or exercise price.
- **Vesting.** The time that must elapse before the employee acquires the right to exercise an option or a percentage of the option granted (for example, 25% of all total options granted over four years).
- **Exercise.** The exchange of an option for actual shares of the company. The employee must pay the grant price as well as the payroll taxes associated with the exercise. And when the employee sells the stock, she may be taxed on the profit made (capital gains) on the difference between the grant price and the sale price.
- **Exercise date.** The date after vesting when the employee purchases shares at the predetermined price under the terms of the option agreement.
- **Holding period.** The period of time that an employee is required to keep the stock after purchasing it and before selling it. The holding period begins on the exercise date and ends on the day before the stock is sold.
- **Expiration date.** The last day the employee can exercise the option under the terms of the contract.
- **Cashless exercise.** This occurs when the employee simultaneously exercises an option and sells the stock just acquired, covering the cost of the options and the taxes due. The employee takes the remainder in cash instead of stock shares.
- **Spread.** The difference between the grant price and the market value on the exercise date.
- **Gain.** The difference between the grant price and the market value on the day the stock is sold.

There are various kinds of stock options, as we discuss below. However, they all have these similarities:

- Options may be exercised (the shares may be purchased) during a specified period of time and at a fixed price.
- After the vesting period, an employee can wait to exercise the option until—and if—the stock’s market value exceeds the price at which the employee can buy it, thus guaranteeing him or her a profit.
- The employee has no risk during the vesting period because there’s no obligation to buy the stock and no money invested yet. If the value of the stock declines, the employee simply elects not to exercise the option.

Now let’s look at the two broad categories of stock options: statutory and nonstatutory (also known as nonqualified stock options, or NQSOs).

**Statutory stock options** are so called because they are subject to a strict set of regulations under federal statutes. For example, to qualify for a favorable capital gain tax rate, an option holder must either exercise the option within two years after the employer grants it, or hold onto the stock for at least a year after exercising the option.

There are two types of statutory stock options: *incentive stock options* (ISOs) and *employee stock purchase plans*. ISOs are governed by a written plan approved by the company’s board of directors and stockholders. The plan lists the employees who are eligible and the number of shares available for these employees.

When an employee is granted an ISO, that’s not considered income on which the employee can be taxed. Nor is it taxable income when he exercises it. After the employee sells the stock, the profit is considered a capital gain and is taxed at that rate.

Can the employee transfer the ISO to his ex-spouse upon divorce? The law says that the option itself—the right to buy the stock—can’t be transferred. If it is, the option becomes a “nonqualified” option (see below). However, if the employee exercises the option first, he may transfer the ISO stock he’s bought to his divorcing spouse.

Besides an ISO, the other type of qualified option is an employee stock purchase plan. Such a plan allows an employee to set aside money from regular paychecks to purchase company stock, either at a discount or at market value on the date of the grant. The stock is held in trust for the

employee, who receives the holdings in stock or cash when employment ends. As with an ISO, the option to buy stock under an employee stock purchase plan cannot be transferred from one divorcing spouse to another.

**Nonstatutory (or nonqualified) stock options** have fewer restrictions, and the tax consequences for the employee are not as favorable. When an employee exercises an option and makes money by buying stock at lower-than-market rates, that money is subject to federal income tax as well as FICA, Medicare, and state and local taxes.

An NQSO can be transferred from an employee to an ex-spouse at divorce. When the ex-spouse exercises the option, she is liable for income tax just as the employee spouse would be.

## **What Are Stock Options Worth at Divorce?**

How can stock options be valued and apportioned among divorcing spouses? That question presents complex problems for family lawyers and courts, as well as for divorcing spouses.

Among the issues: Are stock options property or income, or both? Are options that vest after the couple's separation date considered marital property? If the employee spouse doesn't exercise the option until years after the divorce, does the ex-spouse deserve a portion? Is there a formula courts can use for dividing options? Should a court be able to raise levels of alimony and child support if the value of the stock increases, and reduce the support if the value falls? If an employee's option hasn't yet vested because the employee hasn't worked at the company long enough, how does that affect the value of the option?

There's not a lot of legal precedent to go on, and there are no hard and fast rules that apply to all stock option plans and in all states.

There are, however, some broad guidelines. Stock options granted to an employee spouse before the separation date generally are seen as marital property. Those granted after separation tend to be viewed as separate property of the employee spouse. In a series of California cases, the judges

found that options that were granted and exercised before the separation date were community property—whereas options that were granted during marriage but not exercised until after separation entitled the ex-spouse to a partial interest, based on the amount of time elapsed. About half the states have followed these general principles.

Courts also generally have held that recurring capital gains—including profits from exercised stock options—are income and can be used for calculating support.

What about potential income from *unexercised* options? Some courts have said that unexercised options are part of gross income and therefore can be used to help determine support payments. Courts have also said that an item can be considered both income for support purposes and property for purposes of equitable distribution. If an option is both unexercised and *unvested*, that raises more valuation questions that have no clear answer.

Courts have developed various methods for apportioning options. Sometimes, as we've seen, options can be transferred. Some courts have required the parties to hold stock options as tenants in common (for more on tenancy in common, see Chapter 12).

Still other courts have applied other methods to determine the options' present value, then ordered one spouse to give the other assets from the estate to offset the value of the options. The risk here is that later the stock's value can either fall or skyrocket, leaving each spouse feeling blessed or chagrined.

How stock options are handled in divorce depends on many factors. There is no guarantee your situation will be treated the same as someone else's or that the court will come to the same conclusion in your case as it has in other cases or as courts have in other jurisdictions. You may need to talk at length with your lawyer about stock option issues in your case. See "Points to Include in the Options Agreement," below, for some key points that should be covered in any settlement reached by you and your spouse.

### Points to Include in the Options Agreement

While there are few firm rules about how to handle stock options in divorce cases, certain points ought to be covered in any agreement between you and your spouse. Here is a checklist of issues to include in your analysis:

- **Identify the grants.** Make sure you have all paperwork pertaining to the options as furnished by the employer, specifying the terms of the grant, the grant price, key dates, and all rules that apply.
- **Decide who will bear the exercise fees.** An employee typically pays a fee when an option is exercised. At divorce, the fee is usually paid by whoever exercises the option, whether that's the employee or the ex-spouse.
- **Agree to follow court orders and employer conditions.** Both spouses should agree that the options must be exercised in a way that adheres to both the judge's ruling and the employer's terms.
- **Clarify when options change or terminate.** The agreement should be clear about the duration of options periods and what happens to the options if the employee leaves the company. The employer should be responsible for providing information to the parties about any changes in conditions or timetables for exercising options.
- **Protect personal identification information.** Do not include in any court order personal information such as address, date of birth, or Social Security number. Such information should be provided to the employer and other parties by mail, certified and return receipt requested.





Several websites offer information and resources on stock options. Among them are:

**www.mystockoptions.com.** This comprehensive site includes articles, a glossary, a tax guide, a tax calculator, and answers to frequently asked questions.

**www.stockoptionscentral.com.** This site provides calculators that allow you to run “what if” scenarios to determine option value and taxability.

**www.stockopter.com.** While primarily a site for financial professionals, it does include a glossary and explanatory articles.

## Nonqualified Deferred Compensation Plans

Nonqualified deferred compensation is one method by which companies have traditionally rewarded their highest-ranking executives. Far less common than stock options, these plans are generally found only in large corporations and are limited to a few executives, such as the chief executive officer, chief financial officer, president, and vice presidents.

Under such a plan, the employer defers part of an executive’s income now—thereby reducing the executive’s current tax burden—and provides the income later, when the executive will presumably be in a lower tax bracket. Like stock options, these plans are legally complex and difficult to value and divide at divorce, or even to evaluate to determine what is income available for support.

There are many kinds of nonqualified deferred compensation plans. Some look like 401(k)s, some resemble defined benefit plans (see Chapter 14), and others are merely promises by the employer to pay income to the employee in the future. A common type of plan is the SERP (Supplemental Executive Retirement Plan), or “top hat” plan, which provides additional retirement benefits to a select group of high-level managers through the use of various formulas.

If you are divorcing a spouse with a non-qualified deferred compensation plan, you or your lawyer will want to request documentation from the employer. This might include the plan summary, full plan documents, employment contract, and actuarial analysis.

Two factors reduce the value of these plans in divorce. Because such plans are often unfunded, there is a risk that the employee will never receive the benefits if the company goes bankrupt, reorganizes, or is taken over by another company. Also, the benefit cannot be split between divorcing spouses under a QDRO. (A QDRO assures direct payment of certain benefits to the nonemployee spouse. See Chapter 14.)

## **Questions to Ask an Attorney or Tax Specialist**

1. How do our state courts treat all our employment benefits? As property? As income?
2. What do our state courts have to say about how stock options should be valued and apportioned in divorce? ■

## How Will We Divide Debts?

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|                                                         |     |
|---------------------------------------------------------|-----|
| General Rules on Who's Responsible for Debt .....       | 332 |
| If You Live in a Community Property State.....          | 334 |
| Listing Your Debts .....                                | 334 |
| Instructions.....                                       | 335 |
| Marital Debts and Bankruptcy.....                       | 335 |
| Discharging Marital Debts in Bankruptcy .....           | 339 |
| Terms to Know .....                                     | 339 |
| Types of Bankruptcies.....                              | 343 |
| Dividing Debts at Divorce.....                          | 347 |
| Dividing Debts When There's Nothing to Fight Over ..... | 348 |
| Questions to Ask Your Divorce Attorney .....            | 349 |
| Questions to Ask a Bankruptcy Attorney .....            | 349 |
| Online Resources.....                                   | 350 |

*When you divorce, you divide not only property but debts as well. It's crucial that you and your spouse reach an agreement about how debts will be handled.*

If you are willing to assume a debt, you might ask for something in return. You may be able to make trade-offs—perhaps getting the car or the piano in exchange for paying off credit card debts.

Before negotiating your agreement, you'll want to know what your state laws have to say about who is responsible for paying various debts in your state. You also need to be aware of the possibility that your spouse will declare bankruptcy, default, or fail to live up to your agreement in some other way. Use this chapter to investigate your legal and financial position on debts and divorce.

## **General Rules on Who's Responsible for Debt**

Some general rules for separated, divorced, and married people having financial problems follow. Study these rules to understand which debts you or your spouse are obligated to pay and which property you or your spouse risk losing if you don't pay:

- In most states, a person is responsible for paying only the debts that he or she incurs during marriage—that is, you can't be forced to pay the bills your spouse runs up—except that both spouses are usually responsible for paying debts incurred:
  - with joint accounts
  - where the creditor was looking to both spouses for repayment
  - for the family's necessities such as medical care, food, clothing, and shelter, and
  - for the children's education.

### Be Aware of Medical Expenses

State statutes often expressly state whether a spouse is liable for the necessities of the other. Are medical expenses always considered necessities? The issue of liability for a spouse's medical debts commonly arises in court these days. And there's no clear answer. About half the courts say neither spouse is responsible for the other; the other courts say that both are responsible to each other.

- Usually, debts incurred after the separation date but before the divorce is final are the responsibility of the spouse who incurred them and must be paid by that person. There is an exception—both spouses are responsible for paying debts for the family's necessities and the children's education, regardless of who incurred them.
- A spouse is generally not responsible for paying the debts a mate incurred before marriage or after the divorce became final.
- If you or your ex-spouse agreed to pay certain joint debts as part of a divorce settlement—or if a divorce decree signed by a judge requires that one spouse pay the joint debts—the agreement or decree is binding only on you and your ex. Because you were married when the joint debts were incurred, the creditor has a right to collect from both of you, and no agreement between you and your spouse can change that. If you voluntarily or involuntarily pay bills your ex-spouse was supposed to pay, your remedy is to try to get your ex to reimburse you. Complaints to the creditor will get you nowhere.
- The separately owned property of one spouse usually cannot be taken by a creditor to pay the separate debts of the other. Separate property of one spouse can be taken to pay debts you incur together, and separate property of one spouse is always available to pay that spouse's separate debts. Separate property is property owned prior to the marriage, property accumulated after divorce, and property received during marriage by one spouse only, by gift or inheritance. In a few equitable distribution states, separate property also includes wages earned by a spouse during marriage.

## If You Live in a Community Property State

The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. In those states, property acquired and debts incurred during marriage—called community property and community debts—are joint. In most instances, both spouses are liable for all debts incurred by either, although there are exceptions.

Here are the rules:

- Both spouses are generally liable for all debts incurred during marriage, unless the creditor was looking to only one spouse for repayment or the purchase in no way benefited the “community.” For example, if on a credit application a spouse who bought a kayak claimed to be unmarried or stated that his spouse’s income would not be used to pay the debt, his spouse would not be liable to pay for the kayak if he defaults. Similarly, if a spouse charged a trip to the Bahamas with his or her lover, the spouse who stayed at home would not be liable, as this debt does not benefit the community.
- Spouses are generally not liable for the separate debts their mate incurred before marriage or after permanent separation. However, the debtor spouse’s share of all community property, including his spouse’s half of the nondebtor spouse’s income, can be used to pay debts he incurred before marriage.
- Community property includes all income earned during marriage, except for income earned on property owned before the marriage. This would include revenue from an income-generating piece of property or payments from a vested pension.
- Separate property is limited to property owned prior to the marriage, property accumulated after divorce (after separation, in a few states), and property received during marriage by one spouse only, by gift or inheritance.

## Listing Your Debts

Below is a chart on which you can list all your debts—yours, your spouse’s, and your joint (marital) debts. The liabilities worksheet, which you filled out as part of your *Net Worth Statement* in Chapter 12 should contain all this data.

## Instructions

Using the italicized examples as a guide, list in Column 1 all current debts you and your spouse are responsible for paying. This information can be taken from the *Assets and Liabilities Worksheet* in Chapter 12. In Column 2, write the balance owed on each debt. In Column 3, note whether the debt is your separate debt, your spouse's separate debt, or a marital (joint) debt. In Column 4, write in the name of the person who will assume responsibility for paying the debt. Only in unusual circumstances will one of you be responsible for the other's separate debt. You will need to divide the marital debts, however.

You may want to make several copies of this chart in the event you negotiate back and forth about who will be responsible for paying which debts.

## Marital Debts and Bankruptcy

For many couples, debts and divorce go together the way love and marriage once did. Unmanageable debts may serve as a catalyst for the ending of the marriage in some cases. Other couples feel the pinch as their expenses double when one spouse moves out—they maintain two households, yet their incomes stay the same.

For couples or recently divorced individuals overwhelmed by their debt burden, declaring bankruptcy may provide a way out. In some cases, bankruptcy lets you erase your debts in exchange for giving up certain property. Every state declares certain assets, such as clothing, certain equity in a home, certain equity in a car, and several other items to be exempt. You get to keep exempt property when you file for bankruptcy.

Married couples can file for bankruptcy jointly. Married persons can also file individually, and single people can file on their own. Before deciding on filing as an individual or a couple, you must understand what the different outcomes will be.

If a married couple files for bankruptcy together, they can eliminate all separate debts of the husband, all separate debts of the wife, and all jointly incurred marital debts.

Some debts cannot be erased (discharged) in bankruptcy. These include student loans, restitution for a crime, and in many cases, debts obtained by fraud.

| Spousal Debt Chart |           |                         |              |
|--------------------|-----------|-------------------------|--------------|
| Debts—Example      | Balance   | Husband, Wife, or Joint | Who Will Pay |
| Car Loan           | \$ 8,000  | Joint                   | Wife         |
| Franklin Bank Visa | \$ 1,800  | Husband                 | Husband      |
| Marshall Bank Visa | \$ 2,300  | Joint                   | Husband      |
| Personal Loan      | \$ 5,000  | Joint                   | Husband      |
| Student Loan       | \$ 10,000 | Wife                    | Wife         |
| USA Mastercard     | \$ 4,000  | Joint                   | Husband      |



Support-related debts (such as child support and alimony) owed under a marital settlement or a divorce decree are protected from bankruptcy discharge. (See “Discharging Marital Debts in Bankruptcy,” below.) A tough new law that went into effect in October 2005 tightened the rules on child support and alimony so that they cannot be erased. Not only that, but such obligations now will go to the head of the line, taking priority over the need to repay almost every other kind of debt besides the bankruptcy trustee’s fees. So if you are filing jointly with your spouse, any support-related debts that you or your spouse has from a previous marriage will remain even after your bankruptcy discharge.

And if you find yourself in the situation where your spouse is filing for bankruptcy alone, you will be protected under the new law—at least for the support-related debts. However, a successful bankruptcy can shift some other debts from the ex-spouse who assumed them under the marital settlement agreement and place them on the nondebtor ex-spouse—but not before the nondebtor ex-spouse gets a chance to object to the discharge of certain debts.

Here’s some background on how this all works. Family law is a matter for the state courts, but bankruptcy is governed by a set of federal laws. When those issues overlap—for example, when one spouse files for bankruptcy before, during, or after a divorce settlement—the issues can be complex and confusing. The bankruptcy court’s job is to allow the debtor to have a fresh start after bankruptcy while at the same time protecting the rights of the nondebtor spouse and any minor children.

When one spouse files for bankruptcy, the family court can continue to hear and decide issues relating to establishing amounts for child or spousal support (alimony). But it cannot split up the family home, apportion investments, or distribute other property until it receives permission from the bankruptcy court. So if a debt is classified as a support obligation, it must be paid. But if it’s judged to be a property settlement claim, it can remain in limbo until the bankruptcy case is settled. And the bankruptcy court may rule that the debt is owed by the nondebtor ex-spouse, regardless of what the marital settlement agreement states.

After a divorce, an ex-spouse who’s assigned responsibility for paying joint debts may file for bankruptcy. If the petition is successful, the bankruptcy court may release that ex-spouse from having to pay the

assigned debts. The creditor can no longer collect from that person—but can still seek payment from the other “innocent” spouse. There’s not much this innocent spouse can do to avoid having to pay, or to get reimbursement from the defaulting ex-spouse. If you’re in this situation, you have three bad choices:

- You can file for bankruptcy yourself
- You can refuse to pay the ex-spouse’s debt and take the hit to your own credit record, or
- You can pay the debt and chalk it up to experience.

Fortunately, you can reduce the likelihood of facing this unfortunate set of choices by structuring your separation agreement—and, ultimately, your divorce judgment—to take the possibility of bankruptcy into consideration. If you believe there’s any chance that your spouse may file for bankruptcy protection, be sure to discuss it with your attorney. The lawyer can ask for a clause in your property settlement or divorce judgment that limits the impact of a bankruptcy—for example, by giving a nonbankrupt spouse the right to reopen the case if the other spouse files for bankruptcy.

Read on for more details on how bankruptcy affects financial matters at divorce.

The rules are more complicated for debts that aren’t in the nature of support. Recent changes to the Bankruptcy Code made nonsupport obligations created in connection with a divorce nondischargeable if erasing the debt would harm the nondebtor spouse more than it would benefit the debtor. If nonsupport obligations are involved in the divorce, the nondebtor spouse must file a timely action to keep the debt from being discharged in bankruptcy.

Property settlements are kept on hold until the proposed bankruptcy is resolved. A potentially big issue that must be handled with great care is credit card debt. When spouses obtain a credit card, usually they sign a contract that says both spouses are “jointly and severally” liable. That means if one spouse dies or files for bankruptcy, the other is liable for the entire credit card debt.

For this reason among others, it’s best to pay off the balance on all joint credit cards from marital assets before the divorce goes before a judge. If there’s a sale of the marital home, credit cards can be paid off at the closing. In fact, in some cases credit card companies will accept a reduced amount

if the obligation is paid in one lump sum. If you do that, make sure you get a settlement letter from the credit card firm or collection agency, confirming the terms of the settlement.

If you don't retire your credit card debt when you sell your marital home or other assets, and one spouse files for bankruptcy, the credit card company will go after the other spouse for payment of jointly owned cards. The credit card companies don't care if this is fair; they care about getting what's owed them.

Do not assume that your soon-to-be-ex-spouse will pay the credit card debts assigned by the divorce decree. That's doubly true if a bankruptcy is added to the mix. Any property settlement should contain provisions that address how credit card debt will be handled if one spouse files for bankruptcy.

## **Discharging Marital Debts in Bankruptcy**

Whether an obligation to pay marital debts under a divorce agreement may be discharged in bankruptcy can be tricky. Obligations that were intended as support—or that are “in the nature of support”—cannot be discharged in bankruptcy. Common examples of such obligations are:

- alimony, spousal support, or maintenance
- child support
- attorneys' fees connected with a divorce or with modifying alimony, child support, or child custody orders
- periodic payments that end upon the death or remarriage of the recipient spouse
- agreements to pay marital debts in exchange for lower alimony or child support
- debts paid to a spouse who is maintaining the primary residence of the children while there is a serious imbalance of incomes, and
- debts paid in installments over a long period of time.

## **Terms to Know**

This brief glossary may aid your understanding of the ins and outs of bankruptcy law.

**Automatic stay.** An injunction (order) that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor as soon as a bankruptcy petition is filed.

**Bankruptcy estate.** All property in which the debtor has an interest at the time of the bankruptcy, even if that property is owned or held by another person.

**Chapter 7.** This chapter of the Bankruptcy Code provides for prompt liquidation of assets and distribution of the proceeds to creditors. Generally, the new law limits Chapter 7 to individuals who earn the median income in their state and who take an approved course in financial management before the debts are discharged. The debtor must pay in full all domestic support obligations that come due after the bankruptcy is filed.

**Chapter 11.** Most often used by businesses, this form of bankruptcy seeks to keep the business alive and pay creditors over time. Individuals can also seek a Chapter 11 bankruptcy, but it's an expensive and complex path.

**Chapter 13.** Under this chapter, the debtor keeps his or her property and must pay the debts over time, usually three to five years. The debtor must pay in full all domestic support obligations that come due after the bankruptcy is filed.

**Discharge.** The release of a debtor from personal liability for certain debts. The discharge also prevents the creditors to whom the debts are owed from taking any action against the debtor to collect.

**Exemptions, exempt property.** Certain property that the law allows the debtor to keep from unsecured creditors. For example, in some states the debtor may be able exempt all or a portion of the equity in a home or some or all of the tools that contribute to the debtor's livelihood. State law governs the amount and availability of exemptions.

**Means test.** A test of a debtor's financial viability to determine eligibility to file for Chapter 7. If the debtor is determined to be not eligible, the petition for bankruptcy may be dismissed or converted into a Chapter 13 filing.

**Nondischargeable debt.** A debt that cannot be eliminated in bankruptcy. Examples include a home mortgage, alimony and child support, certain taxes, government-backed student loans, and criminal restitution owed.

### **A Carefully Worded Agreement May Protect You From an Ex-Spouse's Bankruptcy**



To increase your chance that marital debts won't be discharged in the event your ex-spouse files for bankruptcy, your marital settlement agreement, order, or judgment should characterize the debts as "additional child support," "alimony," or "in the nature of support." This will provide guidance to a bankruptcy judge who is asked to determine whether or not the ex-spouse can avoid having to pay the debts. The language of the agreement won't be binding on the judge, who looks behind the agreement to the true nature of the debts, but it will be evidence to the judge that you and your ex-spouse intended the debts to be nondischargeable.

### **What to Do If You Are Facing Bankruptcy**

Bankruptcy is a serious step that should never be considered until all other options are exhausted. For one thing, a bankruptcy may show up for ten years on your credit report, potentially affecting your ability to get a loan or a job, or even to rent an apartment. What's more, the recent tightening of the bankruptcy laws puts additional burdens on those who file, so it's even less of a desirable option than it used to be. And if one spouse files for bankruptcy with the aim of destroying the other, the process can turn into a supreme mess. While your anger may be running as high as your debts, it's important not to act rashly or out of vindictiveness.

Instead, understand that in some cases a bankruptcy, if absolutely needed, can help out both spouses if they file jointly. But that will require cooperation and compromise. Though the new federal law makes bankruptcy more difficult (especially a Chapter 7 filing), it is sometimes the best of a bad range of alternatives.

If you're motivated to explore the bankruptcy option, consider these steps:

### What to Do If You Are Facing Bankruptcy (cont'd)

1. **Get a handle on what you owe.** Set aside time to gather all your bills and tally how much they're costing you each month and what interest rates you're paying. Include secured debts, such as your home and car, and mandatory incidentals like power, phone, groceries, and insurance. Then tally those you want but could live without, such as cable TV, gym memberships, dinners out, and other optional purchases. Always pay the mortgage and the car loan first and keep them current. But beyond that, be tough. If things are so tight that you're considering bankruptcy, it's time to wield the axe ruthlessly.
2. **Work with your spouse, if at all possible.** A joint filing can lessen the pain. If you can find the inner resources to work as a team, you'll save yourself money and grief.
3. **Put yourself on a strict allowance.** Take only a minimal amount from your paycheck in cash and, of course, keep the credit card under wraps.
4. **Sell assets.** Get rid of things that have cash value but not sentimental value, such as some antiques, old clothes, or collectibles. Selling them at garage sales, eBay, or consignment stores can free up cash. Put the money in exempt assets, like retirement plans or other assets that state or federal laws exclude from bankruptcy.
5. **Seek a second or part-time job.** Even flipping burgers may get a little more money coming in and keep a bad financial situation from getting worse.
6. **Try credit counseling.** Set up an appointment with the local affiliate of the National Foundation for Credit Counseling ([www.nfcc.org](http://www.nfcc.org)) and work with them to draft a budget and negotiate a payback plan with your creditors. Or you can try your hand at negotiating. In either case, a delayed repayment plan may negatively affect your credit report but not as much as a bankruptcy would.
7. **Get help if your spouse files.** If your spouse files for bankruptcy, immediately contact a bankruptcy lawyer. Failing to act promptly may leave you without relief.

## Types of Bankruptcies

The two most common types of bankruptcy are called Chapter 7 and Chapter 13, after the sections of the law that are being followed. Chapter 7 bankruptcy allows you to discharge all your debts and be free of them forever. Chapter 13 is a “reorganization” bankruptcy where you pay some amount of each of your debts, in an order set by the court.

Being broke got tougher under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Previously, about two-thirds of those seeking bankruptcy protection opted for Chapter 7 instead of Chapter 13 because the former allows you to discharge all debts. But the new law makes it more difficult to get a Chapter 7 discharge.

How so? For one thing, a complicated means test, administered by your attorney, will determine whether you’ll be allowed the more forgiving Chapter 7. If your income is above your state’s median income, you must file under Chapter 13 unless the bankruptcy court rules your circumstances are extraordinary. Even those who earn less than the state’s median income, must file for Chapter 13 if they can pay more than \$100 a month on their unsecured debt over the next five years.

The new law also requires debtors to take a credit counseling class before a bankruptcy can be filed, and a personal financial-management class before a bankruptcy is complete. Both involve a fee paid by the debtor.

In addition, a wide range of other provisions make filing for bankruptcy more difficult than it was in the past. For instance, miss one filing deadline and your bankruptcy case could be dismissed. What’s more, your collateral, such as furniture and cars, will be assessed at a higher value—and if you’re worth more, your creditors potentially can get more out of you. Further, it’ll be harder to get out from under car loans, student loans, and credit card debt.

In a Chapter 7 bankruptcy, any debt arising from a separation agreement or divorce, or in connection with a marital settlement agreement, divorce decree, or other court order, can be considered dischargeable. If an ex-spouse wants to challenge the discharge of the debt, she may do so in the bankruptcy court. The court will allow the debt to be discharged unless:

- the ex-spouse who filed bankruptcy has the ability to pay the debt from income or property that is not reasonably necessary for support and not reasonably necessary to continue, preserve, and operate a business, or

- discharging the debt would harm the nonfiling ex-spouse or a child more than it would benefit the filing ex-spouse.

Most courts have said that if an ex-spouse who files for bankruptcy claims inability to pay certain debts or greater harm if they're not erased, the spouse must prove that in court. (See, for example, *In re Hill*, 184 B.R. 750 (N.D. Ill. 1995).) At least one court, however, has held the opposite: that it's the nonfiling ex-spouse who must convince the court otherwise. (See *In re Butler*, 186 B.R. 371 (D. Vt. 1995).)

In a Chapter 13 bankruptcy, marital debts will be discharged after the debtor completes a repayment plan. This means that all, some, or none of the debts will be discharged, depending on the terms of the repayment plan approved by the bankruptcy court.

Sometimes in Chapter 7 bankruptcies, a court discharges certain debts that the debtor might have remained responsible for, if only an ex-spouse had challenged the discharge in court. On the other hand, sometimes when an ex-spouse does challenge a discharge, the court finds in favor of the debtor. How can an ex-spouse get protection? One way is to make sure that when a spouse assumes a certain obligation upon divorce, the obligation is made subject to a security interest in that spouse's property and/or an indemnification agreement.

**EXAMPLE:** Jackie and Art divorce. Jackie receives a larger share of the property and gives Art a promissory note for \$35,000 as an even-up payment. Jackie files for bankruptcy and asks the court to erase her obligation to make good on the note. Art fails to contest the discharge of the debt and therefore falls \$35,000 short of getting his share of the marital property. Art could have protected himself by taking a promissory note secured by the house. This kind of note would allow him to force the sale of the house if Jackie doesn't pay. Also, this kind of note can't be erased in bankruptcy if the security interest (the note securing the house) is created at the same time the house transfers from the two spouses to the one keeping it after the marriage (*Farrey v. Sanderfoot*, 500 U.S. 291 (1991).)



Bankruptcy isn't for everyone. A bankruptcy stays on your credit record for ten years, although you can take steps to rebuild your credit and probably obtain credit in two or three years after filing. Nonetheless, bankruptcy is always a possibility for you or your spouse, unless you've already filed within the last six years. If you're overwhelmed by your debt burden, don't immediately discount bankruptcy as an option. If your spouse assumes a large share of the marital debts or owes you a large sum to even up the property division, be on the lookout for a bankruptcy filing, especially if your ex starts to complain loudly about being broke.

Make sure your divorce agreement doesn't leave you vulnerable. Promissory notes, especially unsecured notes (notes that don't give you a lien on property), are almost always wiped out in bankruptcy. You may have a little more protection with secured notes. You may be able to protect yourself by specifying in the settlement agreement that the promissory note or other payments are made in lieu of alimony. If you want to file for bankruptcy, be sure you know what's involved, and whether or not you can wipe out your debts. What's most important is that you get sound legal advice from a bankruptcy attorney or other bankruptcy resources available to you.

## How to Choose a Credit Counselor

Whether you're facing bankruptcy or just need help with overwhelming debt, you can use these tips to help choose a reputable credit counseling agency:

**Avoid promises of a quick fix.** It probably took you many years to build a large debt. Significantly reducing it also can take time. Don't sign up for any plan until you have all the specifics in writing and understand what's being offered.

**Do your homework.** Shop around by talking to at least two or three agencies before deciding which one to use. Ask how much training their counselors receive. Avoid agencies that provide only a debt-management program, which typically involves the counselor negotiating a payback and paying your bills for you in exchange for a fee. Select one that offers a variety of services, such as face-to-face help with budgeting and savings.

**Beware of high or up-front fees.** Carefully read all documents and ask for a clear explanation about the cost for the services. You should not be asked for an up-front fee. Remember, just because an organization is nonprofit doesn't mean it's affordable or even legitimate. Check it out with the Better Business Bureau.

**Ask about the impact on your credit.** A bankruptcy will stay on your credit report for up to ten years, raising the interest rates you're charged for loans and possibly affecting your job prospects. Just undergoing counseling or coming up with a debt-management plan through a credit counselor should not. But be sure to ask.

**Consider do-it-yourself negotiation.** Remember, you have the ability to contact your creditors yourself to negotiate a delay in payment or a discounted rate if you're facing extreme hardship. While you may get a deeper discount if you work with a credit counselor, make sure you take into account that you'll also be paying a fee to the counselor.

**Be wary of pitches about consolidating your debts.** While consolidating bills into one large loan can lower monthly payments, don't do it if you may be tempted to use the money you save each month to go on another shopping spree. By stretching out the term of the loan, you'll pay far more total interest.



See *File for Chapter 7 Bankruptcy*, by Stephen Elias, Albin Renauer, and Robin Leonard (Nolo), or *Chapter 13 Bankruptcy: Repay Your Debts*, by Robin Leonard, or *The New Bankruptcy: Will It Work for You?* by Stephen Elias, all from Nolo. The first book gives all the information necessary to decide whether to file and the forms for filing a Chapter 7 bankruptcy case. A chapter on nondischargeable debts has information on when marital debts can and cannot be wiped out. The second book contains the same information for Chapter 13 bankruptcy cases. The third will explain the new bankruptcy rules and help you assess whether bankruptcy is appropriate for your situation.

## Dividing Debts at Divorce

In Chapter 12, you had the chance to complete *Net Worth* and *Cash Flow Statements*. If you skipped that material, you may want to go back and fill the charts out now. If you have already completed the *Net Worth* and *Cash Flow Statements* in Chapter 12, use this opportunity to update them. You might leave many items blank on these statements, but at least you'll get an idea of what you actually own and owe, and how much it costs you to live. This information is crucial when you divide your debts at divorce.

You have four basic options in allocating your marital debts:

- You and your spouse can sell joint property to raise the cash to pay off your marital debts.
- You can agree to pay the bulk of the debts yourself; in exchange, you get a greater share of the marital property or a corresponding increase in alimony.
- Your spouse can agree to pay the bulk of the debts; in exchange, your spouse gets a greater share of the marital property or a corresponding increase in alimony.
- You and your spouse can divide joint property equally and divide the debts equally—that is, each of you gets half of the property and each of you agrees to pay half of the debts.

From your perspective, the first two options are much less risky than the second two possibilities. Remember the caution we have given throughout this book: *When you're connected to someone financially, you're at risk.*

What happens if your spouse agrees to pay all or even half of the debts and then gets fired, refuses to pay, or files for bankruptcy? Your credit rating will be damaged, or you will be stuck with paying debts. Then the likelihood of getting reimbursed or getting a share of the marital property originally given to your spouse will be slim or nil. So if possible, sell your joint property and pay your joint debts, or agree to pay the debts yourself.

## Dividing Debts When There's Nothing to Fight Over

As your financial picture gets clearer, you may come to the unhappy conclusion that your bills and liabilities far outweigh your assets and income. Don't feel alone. Not only do most Americans live above their means, but many people going through divorce find they simply do not have enough money to make ends meet. Unlike the bitter battles for property that have stereotyped divorce cases on television, you and your partner may admit in despair that there's "nothing to fight over."

If you're in such a position, it's critical for you to take an honest look at your needs and protect your own interests. Even if you have to borrow money to get through your divorce, it could be well worth it to prevent problems later. Hiring a lawyer or financial professional now to review your situation could cost less than a huge tax bill or other debts in the future.

Extensive information on debts and creditors can be found in [\*Solve Your Money Troubles: Get Debt Collectors Off Your Back & Regain Financial Freedom\*](#), by Robin Leonard (Nolo).



Provisions in the Bankruptcy Code refer to the "spouse." Because the federal Defense of Marriage Act defines a spouse as "a person of the opposite sex who is a husband or a wife," many provisions of the Bankruptcy Code don't protect same-sex partners, even if they are married or have registered as domestic partners or entered a civil union. Thus, domestic partners stand in the same line as other creditors even when their claims are for alimony and property-division debts related to a marriage or marriage-like relationship.

## Questions to Ask Your Divorce Attorney



Debts and the fear of bankruptcy can be enough to lose sleep over during divorce. Ask your attorney the following questions so that you know the best ways to protect yourself financially.

1. Who will be legally responsible to pay which debts?
2. What can be done legally to make sure my spouse pays the debts according to our agreement?
3. Am I entitled to reimbursement or credit for our money spent on educational training and expenses, child and spousal support obligations from another relationship, payment of joint debts after filing for divorce, improvement or additions to my spouse's separate property made with our money without my consent, or my spouse's gambling, drug, or alcohol expenses, including rehab?
4. If my spouse makes noise about filing for bankruptcy before our divorce becomes final, should I file, too?
5. How can I stop my spouse from spending marital assets until the divorce is final?
6. If only my spouse signed loan documents while we were married, is that still my debt?
7. If just my spouse signed the loan documents, does the creditor have a right to come after my assets once we're divorced?

## Questions to Ask a Bankruptcy Attorney

If you do find yourself in a bankruptcy situation, whether it's you or your spouse who's filing, consider asking your bankruptcy attorney these questions:

1. What's the effect of filing for bankruptcy before, during, or after divorce?
2. Which assets are exempt from a bankruptcy estate? Which are included?
3. What debt is included in a bankruptcy estate? Which debts are not discharged?
4. How can I protect myself if I don't want to file bankruptcy?
5. If my spouse files for bankruptcy after our divorce is final, would our property settlement protect me?

## Online Resources



There are many good sites, government and private, for information about debt, credit, and other consumer issues. Typically, they include search mechanisms that allow you to home in on the issue most relevant for you. These sites include:

**[www.ftc.gov](http://www.ftc.gov)** (Federal Trade Commission)

**[www.pueblo.gsa.gov](http://www.pueblo.gsa.gov)** (Citizen Information Center of U.S. General Services Administration)

**[www.aba.com](http://www.aba.com)** (American Bankers Association)

**[www.bankrate.com](http://www.bankrate.com)**

**[www.marketwatch.com](http://www.marketwatch.com)**.



## Child Support and Alimony: What Might I Pay or Receive?

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|                                                                                 |     |
|---------------------------------------------------------------------------------|-----|
| Child Support—Legal, Financial, and Emotional Realities .....                   | 354 |
| Legal Realities .....                                                           | 355 |
| Financial Realities .....                                                       | 356 |
| Emotional Realities .....                                                       | 356 |
| Steps to a Settlement .....                                                     | 357 |
| Who Will Have Custody of the Children? .....                                    | 357 |
| What Does It Cost to Rear Your Children? .....                                  | 360 |
| Health Insurance Coverage .....                                                 | 365 |
| How Much Child Support Do You Need—<br>Or Can You Afford to Pay? .....          | 366 |
| What Are the Guidelines for Child Support in Your State? ....                   | 368 |
| Methods of Computing Child Support .....                                        | 369 |
| Payment Practicalities .....                                                    | 372 |
| What Is Your Bottom-Line Decision Regarding Custody and<br>Child Support? ..... | 380 |
| Alimony—Legal, Financial, and Emotional Realities .....                         | 380 |
| Legal Realities .....                                                           | 380 |

|                                                                              |     |
|------------------------------------------------------------------------------|-----|
| Financial Realities .....                                                    | 381 |
| Emotional Realities .....                                                    | 382 |
| Steps to a Settlement .....                                                  | 382 |
| How Much Do You Need to Live On? .....                                       | 383 |
| What, If Any, Are the Financial Schedules for<br>Alimony in Your Area? ..... | 384 |
| How Much Alimony Do You Need—<br>Or Can You Afford to Pay? .....             | 384 |
| Are There Alternatives to Paying or<br>Receiving Monthly Alimony? .....      | 397 |
| What Is Your Bottom-Line Decision on<br>Paying or Receiving Alimony? .....   | 400 |
| Questions to Ask an Attorney .....                                           | 401 |



*Child support and alimony payments are often the most hotly contested issues in a divorce. These payments are often necessary when the money that used to support a single household must stretch to support two.*



If you have no children, skip ahead to the section on alimony.

Unemployment checks and insurance claims can help a couple survive the loss of a job or a house or fire. But who pays the bill when the financial disaster of divorce strikes?

Somehow, household expenses must be paid. Someone must come up with the “Alimonia”—a Latin word for “food” or “support.” Today the word is alimony, although it is increasingly called spousal support, spousal maintenance, or rehabilitative support. The names differ depending on where you live, but the impact seems to be universal: The payer feels the amount is far too much, while the recipient knows it’s not enough.

Both parties may be right.

Breaking one household into two costs more than anyone thinks it will. Besides doubling the basics—mortgage or rent, utilities, and phone bills—divorcing couples must admit that the choices they made as a couple may no longer be realistic. A wife who left her job to care for the children cannot retrace her steps and cover the ground she lost when she dropped out of the workforce. A husband who refused a job transfer so his wife could pursue her entrepreneurial ambitions may be stuck in a dead-end job that he can’t leave without jeopardizing his pension. When you are “fired” from the job of husband or wife, no one offers you an unemployment check. Is it any wonder, then, that alimony often becomes a major battleground in divorce?

If you have children, the struggle to make ends meet can be even more draining. Whether you will pay or receive child support, you’ll need to know what it costs. But how can parents put a price tag on their children?

They can’t and don’t. It’s therefore not surprising that the custodial parent (recipient) never feels he or she is receiving enough and the noncustodial parent (payer) feels hounded for support payment increases.

This chapter first takes you through the legal, financial, and emotional realities of alimony and child support, and then outlines your steps to a settlement.

### Protect Your Parental Rights



Before making any legal moves that affect your children, make sure you are informed about your rights as a parent. Ask your attorney to get precise information about what can happen when custody is disputed. Make sure you know when and where all hearings or mediation sessions will take place. Better to ask too many questions than to lose time with your children because you misunderstood the consequences of your actions. Further, because the court will examine your custody arrangements, be prepared for any stunt your spouse may try to pull in the courtroom. Don't be lulled into a false sense of security because of anything your spouse may have agreed to informally. And never move out of the family residence without a written agreement about custody.

## Child Support—Legal, Financial, and Emotional Realities

Children, unfortunately, are frequently the emotional pawns of divorce. Parents express their resentments about their mates by degrading the other parent in front of the children and by fighting over the children when dealing with custody and child support issues. We urge you not to do this. Fighting scares the children and makes them feel guilty. It also wastes time, money, and resources that could have been spent more positively on your children.

As difficult as it sounds, try to keep your emotions in check. This doesn't mean you should hide your feelings about your divorce from your children. It does mean that you should not take your anger out on your kids. Instead, try to include them in the process in constructive ways. By maintaining a healthy emotional attitude, you will be better equipped to deal with the legal and financial realities of child support.

## Legal Realities

Every parent has an obligation to support his or her children, regardless of divorce. Suppose one parent has primary custody, traditionally called “physical custody,” and the other has secondary custody, or “visitation rights.” (See “Legal Language Alert,” below.) The parent with less custody time is usually ordered to pay some child support to the custodial parent. It is assumed that the custodial parent is meeting his or her child support obligation through the custody itself. For parents with joint physical custody, the support obligation of each is based on a number of factors, such as the ratio of each parent’s income to their combined incomes, the percentage of time the child spends with each parent, and who pays necessary expenses for the child.

While divorcing spouses are permitted to decide virtually all the terms of their divorce without court intervention, the court will insist on examining the child support arrangement. If the judge approves of the arrangement, the court will include it in the judgment. Some of the factors evaluated by courts in setting child support include:

- the needs of the child
- each parent’s ability to earn and pay support, and
- the amount of time the child spends with each parent.

Society has become less tolerant of parents who fail to comply with child support obligations, and the federal government requires all state governments to enact laws to facilitate enforcement of child support orders.

### Legal Language Alert: Custody by Any Other Name ...



Traditionally, terms such as “custodial parent” or “noncustodial parent” have been used by courts and among people in general when talking about parent-child relationships after a divorce. In light of changing family patterns, however, courts are beginning to recognize shared parenting styles and other such arrangements. Legal language is therefore changing, and terms such as “primary custody” and “secondary custody” are beginning to be used. For the time being, however, we will continue to refer to “custodial” or “noncustodial” parents until the new terms become more commonplace.

## **Financial Realities**

Any legal award of child support is probably going to be less than the actual amount necessary to meet the needs of growing children. As with the gap between alimony and living expenses, you will have to devise strategies for finding the additional money not provided by child support.

Even if you receive an adequate child support award, financial reality demands that you recognize the problems caused by lack of compliance. If you are the recipient, what will you do when the check does not arrive or comes late? If you are the payer, what happens when your paycheck is suddenly garnished—or worse, you are threatened with jail for noncompliance? Don't dwell on these negative questions, but at least confront them for your children's sake.

Also keep in mind two new, but sad, trends emerging from the financial realities of divorce. Some parents have reached the painful conclusion that they cannot retain custody of their children because they do not have the resources to support them. At the same time, other parents are fighting for joint custody so they can pay less child support. To avoid these situations, you must squarely face the true costs generated by children and prepare your strongest position for negotiating your settlement and protecting the interests of your children.

## **Emotional Realities**

Your children's reaction to your divorce can have a major effect on your emotional state. On all issues concerning your children—child support, custody, and visitation—you and your mate may inwardly and outwardly struggle over what's best for your children.

A spouse caught up in a power struggle may try to use the children to get back at the other, causing turmoil for all. The "Disneyland Dad" (or Mom) showers the children with gifts, using financial leverage as a way of upstaging the other parent. Be aware of your own behavior, and remember that it can do more damage to the children than to anyone else. Do not let child support payments become an excuse for venting frustrations at your ex-spouse.



There are lots of good books that can help you deal with the emotional realities of parenting during divorce. Check any of the websites listed in Chapter 1 for resource lists. Here are a few titles to get you started:

*Building Parenting Agreements That Work: Putting Your Kids First When Your Marriage Doesn't Last*, by Mimi Lyster (Nolo), helps you negotiate and prepare a parenting agreement with your spouse.

*Always Dad: Being a Great Father During and After Divorce*, by Paul Mandelstein (Nolo), offers practical advice for dads.

*Mom's House, Dad's House: Making Two Homes for Your Child, Revised Edition*, by Isolina Ricci, Ph.D. (Simon & Schuster), is the classic text on dealing with shared custody.

*Helping Kids Cope With Divorce the Sandcastles Way*, by M. Gary Neuman, L.M.H.C., with Patricia Romanowski (Random House), helps parents understand what their kids—of any age—are experiencing during divorce and offers practical advice for communicating with children.

## Steps to a Settlement



As you move through your divorce, you will probably find that your choices about child support are dictated by local financial guidelines. Nevertheless, by answering the following questions, you can analyze the financial consequences of paying or receiving child support:

- Who will have custody of the children?
- What does it cost to rear your children?
- How much child support do you need—or can you afford to pay?
- What are the guidelines for child support in your state?
- What is your bottom-line decision regarding custody and child support?

## Who Will Have Custody of the Children?

Custody has two components: the legal authority to make decisions about the medical, educational, health, and welfare needs of a child (legal custody), and physical control over a child (physical custody). In most states,

courts now tend to award joint legal custody, which lets divorced parents share in making decisions about their children's health, education, and welfare. The most common arrangement is to share legal custody, with one parent having primary physical custody and the other secondary physical custody or liberal visitation.

You can work out whatever arrangement you want regarding custody. If you can't agree, you may be able to use mediation. Mediation is a nonadversarial process in which a neutral person (a mediator) meets with parents to help them resolve problems. To reach a mediated solution, both parents must agree. The mediator cannot impose a solution on the parties. Many states require parents to participate in mediation before bringing a custody dispute to court. If you still can't agree (or don't use mediation) and you leave the custody decision to the court, the legal standard the court will use is "the best interests of the child." The factors courts consider in determining the best interests usually include:

- the child's age, sex, maturity, temperament, and strength of attachment to each parent
- special needs of the child and parents
- the child's relationship with siblings and friends
- the distance between the parents' households
- the flexibility of both parents' work schedules and the child's schedule
- child care arrangements
- transportation needs
- the ability of the parents to communicate and cooperate
- the child's and parents' cultural and religious practices
- the willingness of a previously uninvolved parent to provide adequate supervision
- each parent's ability and willingness to learn basic caregiving skills such as feeding, changing, and bathing a young child, preparing a child for day care or school, or taking responsibility for helping a child with homework, and
- each parent's ability to care for the child's needs.

You will need to cooperate with your ex-spouse to make sure that you put your children's interests at the forefront of your divorce decisions. Some important dos and don'ts are listed below.

## The Dos and Don'ts of Parenting During Divorce

### **Do:**

Initiate the child's contact with the other parent on a regular basis by phone, letter, audio and videotapes, email, and other forms of communication

Maintain predictable schedules

Be prompt and have children ready at exchange time

Avoid communication that may lead to conflict at exchange time

Ensure smooth transitions by assuring the children that you support their relationship with the other parent and trust the other parent's parenting skills

Allow the children to carry "important" items such as clothing, toys, and security blankets with them between the parents' homes

Follow similar routines for mealtime, bedtime, and homework time in each home

Handle rules and discipline in similar ways in each home

Support contact with grandparents and other extended family so the children do not experience a sense of loss

Be flexible so the children can take advantage of opportunities to participate in special family celebrations or events

Give as much advance notice as possible to the other parent about special occasions

Provide an itinerary of travel dates, destinations, and how the children or custodial parent can be reached when on vacation

Establish a workable, "businesslike" method of communication, and

Plan vacations around the child's regularly scheduled activities

### The Dos and Don'ts of Parenting During Divorce (cont'd)

**Don't:**

Make your child choose between mom and dad

Question your child about the other parent's activities or relationships

Make promises you do not keep

Argue with or criticize the other parent when your child is present or can hear you

Discuss your personal problems with the child or where the child can hear you

Use your child as a messenger, spy, or mediator, or

Withhold visitation because of the other parent's failure to pay support.

**Get professional help from an attorney, mental health practitioner, court services mediator, domestic abuse agency, or social services agency if there are issues of:**

child abuse or neglect

serious mental or emotional disorders

drug or alcohol abuse or criminal activity

domestic violence, or

continuous levels of very intense conflict.

### What Does It Cost to Rear Your Children?

The list below will alert you to items you should consider in figuring the cost of rearing children. As you review the list, calculate the average amount you spend each month. You can make this calculation by totaling the three most recent months and then dividing by three. Check the monthly expenses column of your *Cash Flow Statement* (see Chapter 12), look back through your checkbook, or make an educated guess to find your monthly outlays.

After filling in each number, total the expenses at the end.



\$ \_\_\_\_\_ *Child care*

If both parents work, child care costs may be significant. If you have relied in the past on informal babysitting arrangements with friends or relatives, those arrangements cannot and should not be considered permanent. If you don't know the going rate for child care in your area, investigate. You must factor the cost of competent care into your children's future. The court will order that child care expenses be shared by the parents to allow the custodial parent to work outside the home.

\$ \_\_\_\_\_ *Education or college funds*

Even after divorce, it's possible for parents together to realize the joint goal of providing for a child's private schooling or college education. It takes planning and cooperation, but it can be done. Besides college, your children may want to receive special training for a profession or the arts. These costs can sometimes be staggering. It's necessary to recognize them now, before your settlement is negotiated.

Agreements between divorcing spouses about post-high-school education should include:

- acceptable schools, location, and accreditation
- what GPA is expected of the child in high school and college
- what contributions each parent will make to the student's living expenses—such as allowances, car expenses, and traveling-home expenses—and whether money will be paid directly to the student, to a third party, or to the custodian parent
- student's application for financial aid
- academic load (full-time or part-time)
- whether the student will be required to work while in school, and
- methods to resolve disagreements about post-secondary education.

### Rising College Costs

If your children will attend college, don't forget inflation. Throughout your divorce you have to keep an eye on the future—and that includes the real-dollar costs of that future. Tallying the impact of inflation on college expenses can be an eye-opener. Suppose tuition currently averages \$10,000 annually. If inflation is 4% a year and your seven-year-old enrolls as a freshman in ten years, you will need \$16,010 of today's dollars to pay that \$10,000 tuition.

You must also consider the fact that college tuition itself will increase. In this example, if tuition increases at 7% per year, you will need \$19,672 for that freshman year (not counting any increase for inflation)—almost twice the current tuition. You will need to put your college funds in an investment vehicle that grows at a rate faster than inflation.

\$ \_\_\_\_\_ *Emergency savings*

Financial planners make a standard recommendation that you have an emergency cash reserve equal to three to six months of fixed expenses. Be sure that reserve includes your children's normal expenses. You can also make your life after divorce easier if you include a cash cushion for the emergencies that children can create.

\$ \_\_\_\_\_ *Health and dental care*

Divorce affects the health care coverage of children. You and your spouse must reach an agreement as to who will carry the children on a health plan, who will buy coverage, and how you will pay for medical expenses not covered by the plan or copayments and deductibles. If you cannot agree, a court will make the order for you. Some states mandate that if neither parent has insurance covering the children, one parent must pay for reasonable medical insurance. Also be aware of what benefits are covered and how long they last. For more details on health care coverage for youngsters, see "Are There Alternatives to Paying or Receiving Monthly Alimony?" below.

\$ \_\_\_\_\_ *Hobbies*

Are your children involved in sports, music, or ballet? Do they act in community theater? Do they want to go to summer camp? Do they expect to as they grow older? Check how much has been spent on special lessons and hobbies, or talk to parents whose children are involved in similar pursuits to get an idea of future costs. You will want your agreement to indicate who will pay for which activities and hobbies.

\$ \_\_\_\_\_ *Birthdays and holidays*

Do you splurge on special occasions and birthdays? Do your children have high expectations about gifts? Depending on how many children you have, these costs can add up. You may need to readjust your budget and let your children know about the change. Under the best circumstances, you and your soon-to-be-ex-spouse might agree to a spending limit so that one partner does not use “goodies” to curry favor.

\$ \_\_\_\_\_ *Total expenses for children*

### **Checklist of Issues to Consider When Negotiating Child Support**

When you sit down to talk seriously about child support, you will need to take into account all of the considerations listed above, and you'll also need to look at factors that might cause a court to deviate from the standard support guidelines. Here's a checklist that will help you remember to cover all the bases when looking at child support issues.

Consider things like:

- ✓ children's special needs, including physical, emotional, and health needs, educational needs, day care costs, or needs related to the child's age
- ✓ shared physical custody arrangements
- ✓ support obligations of either parent to a former household, including alimony
- ✓ an extraordinarily low- or high-income parent
- ✓ the intentional suppression, reduction, or hiding of income
- ✓ other support given, such as lump-sum payments, use of a separate property residence, payment of a mortgage or medical expenses, or provision of health insurance coverage
- ✓ a parent's own extraordinary needs, such as unusual medical expenses
- ✓ deferred sale of family residence, in which the rental value exceeds the mortgage payments, homeowner's insurance, and property taxes
- ✓ travel expenses required for custodial time with one parent
- ✓ how the child support payment will be secured, including a requirement of life or disability insurance
- ✓ employee benefits, including medical savings plans, cost and quality of medical, dental, and life insurance
- ✓ other fairness factors.

## Health Insurance Coverage

Of all the uncertainties that result from a divorce, getting or keeping health care coverage for your children can be one of the most worrisome. To help relieve some of this worry, a federal law (P.L. 103-66, Omnibus Reconciliation Act of 1993) allows custodial parents to obtain a court order for health insurance coverage for their children through the noncustodial parent's employment insurance plan, as long as the plan isn't self-insured. Coverage cannot be denied by the noncustodial parent, his or her employer, or the insurance company simply because the child does not live with that parent, is not claimed as a dependent, or lives outside of the plan's service area.

The court order for health care for your children is called a QMCSO, a Qualified Medical Child Support Order. A QMCSO can require that:

- an employee's child is covered under an employer-provided health care plan
- the premium is deducted from the employee's paycheck
- reimbursements are made directly to the nonemployee parent if that parent pays the provider
- the nonemployee parent receives information regarding the health care plan and reimbursements, and
- other health coverage is provided as specifically directed.

You will want to use a QMCSO when:

- the employee parent is or may be a recalcitrant payer
- the employee parent's regular medical plan determines that the children are ineligible for dependent coverage if they are living with the other parent
- the custodial parent prefers to deal directly with the plan administrator for information, forms, and reimbursement
- the employee parent selects a medical plan that is not suitable for the child—for example, if the employed parent chooses a plan with a very high deductible (not appropriate when you have children who will inevitably visit the doctor) the QMCSO gives the other parent the option of selecting a plan with a very low or no deductible, or
- the employee parent wants to take advantage of favorable "family coverage" premiums.

To qualify as a QMCSO, the medical support order must:

- create the child's right to receive benefits under the group plan
- specify the employee parent's name and last known mailing address and also that of each child covered by the plan
- specify each plan and time frame to which the order applies, and
- not require the plan to provide any additional benefits not actually provided in the plan.

While the QMCSO can be valuable in making sure your children's health care is protected, it may include some of the following:

- limited coverage for a child residing outside the area served by the plan—although the plan cannot deny coverage for this reason, it can limit the coverage it offers, and
- limits on a child's ability to obtain medical coverage different from the coverage provided by the employee parent.

If you elect to use a QMCSO, the custodial parent should obtain copies of the following:

- a medical plan and summary plan description
- election forms highlighting the possible elections and open enrollment periods
- information on current beneficiary designations, and
- written material concerning plan requirements for terms of a QMCSO.

A sample QMSCO appears at the end of this chapter.

## **How Much Child Support Do You Need— Or Can You Afford to Pay?**

In figuring out how much child support you need or can afford to pay, you will consider the same three items you considered with alimony—income needs, taxes, and payment practicalities.

### **Income Needs**

The difference between legal reality and financial reality defines your income needs for child support. By legal reality, we mean the amount set by your state's child support formula. This is the guideline amount that you are likely to pay or receive. Your lawyer or local agencies can help you determine this figure (see "What Are the Guidelines for Child Support in Your State?" below).

The financial reality is the actual cost every month of rearing your children.

**For recipients.** If your actual child-raising costs are higher than the amount in the legal guideline and you have no way to make up the gap, you'll have to negotiate for a higher amount. If your spouse is aware that the guidelines are lower than the amount you are asking for, you may have little leverage. Nevertheless, you can still attempt to push up the amount of support.

**For payers.** Recognize that the gap between what your children cost and what you have to pay has to be closed somehow. If the custodial parent has no other source of revenue, keep in mind that he or she may ask for more money from you, now and in the future. You and your spouse may be able to save yourselves time and trouble by negotiating child support from a realistic financial base right from the start. Often, divorcing couples find there is simply not enough money to meet these costs, and both spouses have to pare down their lifestyles.

## Taxes

Child support payments have no tax consequences. They are neither deductible to the payer nor taxed as income to the recipient.

Children, however, have plenty of tax consequences. First and foremost, they are considered dependency exemptions. Parents must decide who will claim the children at tax time. Often, the noncustodial parent claims the children in exchange for paying higher support. The custodial parent must relinquish claim to the dependency exemption by signing IRS Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents*. When the parents have joint physical custody, they may each claim a child (if they have more than one) or alternate the claim year to year. No matter who claims the children as dependents, both parents must list the children's Social Security numbers on their tax returns to ensure that only one parent is claiming the children.

The following tax benefits are among those available to parents to offset the cost of raising children:

- earned income credit
- child care credit

- medical expense deductions
- head of household filing status
- dependency exemption
- child tax credit (for three or more children)
- deduction for interest on qualified education loans
- Hope and Lifetime Learning credits for tuition costs, and
- education IRAs.

Not all of these benefits are available to all parents, but you need to be aware of these potential tax benefits as you make your custody and child support agreements.

Only a custodial parent is entitled to claim the child care tax credit. In general, employed custodial parents of a dependent child under the age of 13 are eligible for the credit for child care expenses incurred so that the parent can earn an income. As the custodial parent's income increases, however, the credit phases out. Keep in mind the availability of the tax credit when negotiating your agreement about who will pay child care expenses.

Any parent can claim a deduction for medical expenses actually paid, but only if those medical expenses exceed 7½% of your adjusted gross income. If your total medical expenses are high enough, you may want to allocate them to the lower wage earner so that parent can take the deduction.

Only a parent who has physical custody more than half the time can file as head of household. If the parents have joint legal and physical custody (and physical custody is divided 50-50), neither can file as head of household, because the dependent child resides with neither parent for more than 50% of the year.

If you have more than one minor child and share physical custody, you can specify your arrangement as 51% for one child with one parent and 51% for the other child with the other parent. Because each parent has a dependent child in the home more than 50% of the year, each parent can file as head of household.

## **What Are the Guidelines for Child Support in Your State?**

The Family Support Act of 1988 required all states to adopt a statewide uniform child support formula. Parents may be able to agree on a child support amount different from that required by the state formula. However,



neither the court nor the children are bound by the agreement if it is for less than the state minimum. Child support is an area in which judges have little discretion to allow support that is less than the guidelines. Remember: *All* parents are obligated to support their children, and a custodial parent cannot give up permanently *the child's* right to receive support.

### **What If Your Spouse Takes a Lower-Paying Job to Reduce the Child Support Obligation?**

Courts are displaying little tolerance for spouses who take lower-paying jobs than those for which they are qualified. A court may “impute”—that is, assume—a higher amount of income for that spouse and base child support on that higher amount. Also, to determine support payments, a court may factor in benefits from deferred compensation, fringe benefits, and certain depreciation deductions for the purpose of determining business income. California and New York courts lead the way in making it difficult for individuals to play games with income in order to hold down alimony or child support payments.

## **Methods of Computing Child Support**

There are two primary methods that courts use to compute child support. Which one applies to you depends on where you live. The two methods are called “income shares” and “percentage of income,” and are discussed in more detail below. If you want to find out which formula is used where you live, check with a family law attorney or use one of the support calculation programs described below.

### **The Income Shares Method**

The income shares method calculates support by evaluating the proportional income of each parent and considering the cost of work-related day care and premiums for the children’s medical insurance, among other factors.

The income shares model aims to provide the child with the same proportion of parental income—and thus the same lifestyle the family enjoyed—that he or she would have received as a member of an intact household.

### **The Percentage of Income Model**

The percentage of income model requires that either a flat percentage or varying percentage of the noncustodial parent's gross or net income be paid to the custodial parent.

Under the *flat percentage* model, the percentage of income devoted to child support remains constant at all income levels. Under the *varying percentage* model, however, the percentage of income devoted to child support varies according to the level of income, with the support percentage decreasing as income increases. Under either variation, the percentage to be applied is determined by the number of children and, in some states, by the ages of the children.

### **Calculating Support**

Whichever system your state uses, the easiest way to get a general idea of what your support obligations will be is to ask a lawyer who is familiar with your financial situation. But if you want to get a ballpark of what you might have to pay, or what you will be owed, or if you are representing yourself, in most states there are websites—either state-sanctioned or commercial—that will help you calculate an estimate. See “How to Find and Use an Online Support Calculator,” below.

## How to Find and Use an Online Support Calculator

Many states have state-sponsored websites that use the state's guidelines to help you to make ballpark child support calculations for free. There are also numerous commercial websites for specific states that will help you make the calculations for a fee. Finally, [www.alllaw.com](http://www.alllaw.com) offers support calculators for every state.

Often, there is a website specifically designed for your state that says it is the “official” one used by the courts in your state. Now that courts are required to have statewide guidelines for support, judges use computer programs to calculate support—and often you can find the same system, simplified for a layperson to use, online for a fee.

The fee that the websites charge will vary from about \$3 to \$10 per calculation. Some might offer a monthly fee, but most sites will charge you per calculation. You might think that you only need to do one calculation, but often you will want to do more—for example, if you aren't yet sure how much time your kids are going to spend with each parent, you'll need to do a calculation for each of the different possibilities for time-sharing, which can affect support.

To use the support calculators, you'll need to know each parent's gross and net income, deductions, and exemptions—it helps to have a copy of a recent pay stub for each parent. Most calculators will ask for information that will allow for adjustments based on child care expenses, extraordinary medical or educational expenses, and other special circumstances.

For more on how to find state-sponsored websites and other resources relating to child support calculators, check out [\*Nolo's Essential Guide to Divorce\*](#), by Emily Daskow.

The results you get from a support calculator will be estimates, but they will generally be in the ballpark, and you can use them to negotiate about support. If you have a dispute, though, the court will have the final say, using its official computer program.

## Payment Practicalities

The practical matter of getting child support payments from one person to the other can create highly charged problems. Below are questions and suggestions to help prevent these problems. Whether you deal with these items during your negotiations or in the final settlement, use the spaces provided to jot down your ideas. You can refer to these points when needed. Put a check mark in front of the question once it is resolved.

### How and When Child Support Will Be Paid

\_\_\_\_\_ *How will child support be paid?*

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You can agree to send or receive a monthly check. The court, however, may want to set up a different process.

The Family Support Act of 1988 requires that by 1994, all child support orders had to contain an automatic wage withholding provision. An automatic wage withholding order works quite simply. When the court orders you to pay child support, the court—or your child's other parent—sends a copy of the court order to your employer. The custodial parent's name and address is included with this order. At each pay period, your employer withholds a portion of your pay and sends it on to the custodial parent. Only if you and your child's other parent agree—and the court allows it—can you avoid the wage withholding and make payments directly to the custodial parent.

If you don't receive regular wages but do have a regular source of income, such as payments from a retirement fund, annuity, or Social Security, the court can order the child support withheld from those sources of income. Instead of forwarding a copy of the order and the custodial parent's name and address to an employer, the court sends the information to the retirement plan administrator or public agency from which you receive your benefits.

Mandatory wage withholding operates differently among the states. In Texas and Vermont, for example, all current orders include automatic wage withholding, regardless of the parent's payment history. The rationale is that by not distinguishing between parents with poor payment histories and parents who have paid regularly, no parent is stigmatized.

In California, wage withholding orders are automatic as well. But parents who show a reliable history of paying child support may be exempt. And in all states, employers must withhold wages if the payer is one month delinquent in support.

A few states have set up other mechanisms to collect child support as it becomes due. For example, a judge may order a noncustodial parent to pay child support to the state's child support enforcement agency, which in turn pays the custodial parent. This program is often used where automatic wage withholding is not in effect. It may also be used for noncustodial parents without regular income (the self-employed) or when parents agree to waive the automatic wage withholding.

Some other states let judges order noncustodial parents to make payments to court clerks or court trustees who in turn pay the custodial parents. This program is mandatory in Arizona, Idaho, and Kansas.

\_\_\_\_\_ *On what day of the month will payments be made?*

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Most custodial parents find it convenient to pay child support shortly after being paid themselves. If you are a recipient, and payments will not arrive until after your child's monthly child care bill or health insurance premium is due, you'll need to make different arrangements. Try saving money from the previous month or contacting the creditor and negotiating a new payment schedule. Try to get your payments in sync with your cash flow. You don't need to tell the creditor you're waiting for your child support check. Creditors may be surprisingly cooperative when you contact them in advance and honestly negotiate so they are assured of getting their payments.

\_\_\_\_\_ *How long will child support payments be made?*

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You must pay child support for as long as your child support court order says you must. If the order does not contain an ending date, in most states you must support your children at least until they reach age 18. A few states, however, extend the time and require you to support your children:

- until they finish high school
- until they reach 21 (for example, this is the requirement in New York)
- until they complete college, or
- if they are disabled, for as long as they are dependent.

Your child support obligation will end, however, if your child joins the military, gets married or moves out of the house to live independently, or if a court declares your child emancipated.

Child support obligations extend beyond the death of the paying parent—if that parent leaves an estate, the estate must continue paying support.

If you owe back support, it doesn't go away when your child turns 18 (or whatever age you are no longer liable for support). Many states give a custodial parent ten or 20 years to collect back child support—with interest.

\_\_\_\_\_ *How will you handle child support modifications?*

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A court retains the power to make orders involving child support. If a noncustodial parent can't afford the payments, that parent must take the initiative to change the child support order. Or, if a custodial parent can't live on the current payment, he or she needs to ask for more. As a first step, the parent wanting the change should call the other parent and try to work out an agreement. If you reach an agreement, be sure to get it in writing. You'll then need to get a judge's signature.

If you can't make satisfactory arrangements with your ex-spouse, the parent wanting the change will have to file papers with the court, schedule a hearing, and then show the judge that the support amount is too little to live on—or too much to pay. A noncustodial parent needs to understand that a court won't retroactively decrease child support, even if the noncustodial parent was too sick to get out of bed during the affected period. Once child support is owed and unpaid, it remains a debt until it is paid.

To get a judge to change a child support order, you must show a significant “change of circumstance” since the last order. What constitutes a significant change depends on your situation. Generally, the condition must not have been considered when the original order was made, and must affect your—or your child's or the other parent's—current standard of living.

Changes that qualify for a *noncustodial* parent include:

- your income has substantially decreased
- you have increased expenses, such as a new child
- a raise you expected—which was the basis of the last order—didn't materialize
- the custodial parent received a large inheritance, an increase in compensation, or income-producing assets, or
- your child's needs have decreased—for example, she is no longer attending private school.

Changes that qualify for a *custodial* parent include:

- you have a substantial decrease in income
- you have increased expenses, such as a new child
- the noncustodial parent received a raise, large inheritance, or income-producing assets, or
- your child's needs have increased—for example, ongoing counseling.

## Dealing With Unpaid Child Support

\_\_\_\_\_ *How will you handle nonpayment of child support?*

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Unpaid child support (sometimes referred to as “being in arrears”) accumulates when the parent doesn’t pay what is owed. If the recipient is owed a great deal in arrears, that parent can ask a judge to issue a judgment for the amount due.

States’ child support enforcement agencies, custodial parents, judges, and district attorneys use several different methods to collect child support.

**Court hearings.** Failing to follow a court order is called “contempt of court.” A parent who is owed child support can schedule a “show cause” hearing before a judge. The other parent must be served with a document requiring attendance at the hearing, and then must explain why the support hasn’t been paid. If the noncustodial parent is a no-show, the court can issue an arrest warrant, which could lead to a night or two at the county jail.

If the noncustodial parent attends the hearing, the judge can still require jail time for violations of the support order. To stay out of jail, the parent must first show why the money wasn’t paid and then explain why he or she didn’t request a modification hearing.

Court hearings (and jail) are the second-most frequently used child support enforcement technique, after wage withholding.

**Interception of tax refunds or lottery winnings.** One of the most powerful collection methods available is an interception of the payer’s federal income tax refund, state income tax refund, or sales tax refund. The custodial parent can ask the district attorney to call the Treasury Department for help. States also intercept tax refunds to satisfy child support debts. Also, many states with lotteries let custodial parents apply to the state for an interception of the other parent’s winnings.

**Property liens.** In some states, a custodial parent can place a lien on the payer’s real or personal property. The lien stays in effect until the payer pays up, or until the custodial parent agrees to remove the liens. The custodial parent can force the sale of the noncustodial parent’s property, or can wait until the property is sold.

**Posting bonds or assets to guarantee payment.** Some states allow judges to require parents with child support arrears to post bonds or assets, such as stock certificates, to guarantee payment. In California, for example, if a parent misses a child support payment and the custodial parent requests a court hearing, the court may order the noncustodial parent to post assets (such as putting money into an escrow account) equal to one year’s support or \$6,000, whichever is less.



**Reports to credit bureaus.** If the custodial parent owes more than \$1,000 in child support, that information may find its way into a credit file maintained by a credit bureau. Federal law requires child support enforcement agencies to report known child support arrears of \$1,000 or more. Many child support enforcement agencies automatically send information about the child support order to credit bureaus, even though payments are current.

**Reporting to “most wanted” lists.** States are encouraged to come up with creative ways to embarrass parents into paying the child support they owe. Most states now publish “most wanted” lists of parents who owe child support.

**Refusal to renew professional licenses.** Some states will not renew contractor’s or professional licenses of people behind on child support. These may include business, recreational, personal, or professional, such as attorney, contractor, cosmetologist, doctor, or hunting or fishing licenses. Without a license, the payer cannot legally practice his or her profession in the state.

**Refusal to renew or suspension of driver’s license.** Parents in some states are not allowed to possess a driver’s license if they have not met child support obligations.

**Wage and property garnishments.** Child support arrears can often be collected by a wage garnishment. A wage garnishment is similar to a wage withholding—a portion of the noncustodial parent’s wages is removed from the paycheck and delivered to the custodial parent. They differ, however, in one way: the amount withheld. The amount of a wage withholding is *the amount of child support ordered each month*. The amount of a wage garnishment is *a percentage of the payer’s paycheck*. The amount the payer was originally ordered to pay is irrelevant.

If the wage garnishment does not cover what’s owed, the custodial parent may try to get other property to cover that debt. Common property targets includes bank accounts, cars, motorcycles, boats and airplanes, houses and other real property, stock in corporations, and accounts receivable. It’s also possible that unemployment compensation can be withheld in some states.

**District attorney assistance.** In most states, a local D.A. will help—and in some states is required to help—a custodial parent who hasn't received child support.

**Passport denial.** In cases where arrears exceed \$5,000, the nonpaying parent may lose his or her passport privileges.

## Finding a Missing Parent

It's hard to collect back (or current) child support when you can't find the person who owes it to you. If your ex-spouse is missing, the best place to start searching for him or her is to contact your state child enforcement agency (or the family support division of the district attorney's office). Be prepared to provide the following information about the missing parent:

- name, address, Social Security number, date of birth, physical description, father's name, and mother's maiden name
- names of friends and relatives and names of organizations to which he or she might belong
- name and address of current or recent employer, and
- information about his or her income and assets, pay stubs, tax returns, bank accounts, investments, or property holdings.

You'll also need to give the enforcement agency the following information about yourself and the child(ren) who are owed support:

- children's birth certificates
- child support order
- divorce decree or separation agreement
- records of past child support received, and
- information about your income and assets.

For more information about collecting past-due child support and/or locating a parent, go to the website of the Office of Child Support Enforcement at [www.acf.dhhs.gov](http://www.acf.dhhs.gov). Click on the link for "child support" and look up their "Handbook on Child Support Enforcement."

## **Tapping Pension Plans to Pay Spousal and Child Support**

A Qualified Domestic Relations Order (QDRO, pronounced “quadro”) is a court order to the administrator of a retirement plan spelling out how the plan’s benefits are to be assigned to each spouse in a divorce. (See Chapter 14 for details.) A QDRO can be used to collect child support and/or alimony payments from the funds in a retirement plan under certain conditions.

A QDRO is most useful when the payer is self-employed and has rights to benefits from a prior employer or when the payer changes jobs a lot. If the payer is not yet eligible for benefits, you may be able to secure payments from a defined contribution plan, such as a profit-sharing or 401(k) plan. These plans are a particularly good source for support arrears because the plan administrators normally want to make a lump sum payment, not a series of monthly payments.

If your spouse’s pension plan qualifies, you can use the QDRO to collect child support and/or alimony payments. The QDRO must clearly specify how much will be paid, to whom, and for how long, and the benefits must be currently available to an alternate payee (nonemployee spouse) under the terms of the plan.

If the retirement plan currently pays benefits, the QDRO operates like a garnishment of wages—that is, the money is removed from the benefits check and sent directly to the recipient. If retirement benefits are not yet being paid, the structure of the QDRO depends on the situation. If the payer is eligible to receive benefits under the plan (but has chosen to continue working), the QDRO could require that the plan make the monthly support payments. If the payer is still working, however, it is usually easier to use a wage garnishment.

### **Tax Problems With Using a QDRO**

Child support, unlike alimony, is not taxable. Using a QDRO to collect child support from a pension plan, however, makes it taxable income to the recipient, because the tax code requires that any payments from a QDRO to a former spouse be taxed. To compensate, you can try to get the child support payments increased to allow for withholding of taxes. Otherwise, do not use this option unless no reasonable alternative exists to collect the payments.

## What Is Your Bottom-Line Decision Regarding Custody and Child Support?



By this point, you've worked through questions on custody and child support. Use the space below to formalize your decision by writing out what you want to accomplish regarding custody and support in the settlement negotiations.

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## Alimony—Legal, Financial, and Emotional Realities

It helps to think of alimony as a separate issue, distinct from your property settlement (except if your property earns income). Before reviewing the steps toward a settlement, take a few minutes to read about the legal, financial, and emotional realities surrounding alimony.

### Legal Realities

Until the 1970s, alimony was a natural extension of the financial arrangement in traditional marriages, where the husband was the breadwinner and the wife stayed home, caring for the house and children. The amount of alimony was determined by a number of factors—the needs of the spouses, their status

in life, their wealth, and their relative “fault” in ending the marriage. For example, if a husband was committing adultery or treating his wife cruelly, he would pay a relatively large amount. If the wife was having an affair or treating her husband cruelly, she would receive little or no alimony.

Today, the following factors are generally considered in determining alimony:

- the recipient’s needs
- the payer’s ability to pay
- the age, health, and standard of living of the spouses
- the length of the marriage
- each spouse’s ability to earn
- the recipient’s nonmonetary contributions to the marriage
- the recipient’s ability to be self-supporting, and
- tax advantages and disadvantages.

Except in marriages of long duration (usually ten years or more) or in the case of an ill or ailing spouse, alimony today usually lasts for a set period of time, with the expectation that the recipient spouse will become self-supporting and eventually no longer need it.

In an effort to make alimony awards more uniform, some individual counties within states have adopted financial schedules to help judges determine the appropriate level of support. Of course, spouses can make arrangements outside of court that differ from the schedules. However, if you cannot agree on the amount, a judge will decide how much alimony will be awarded. Leaving such a decision to a judge may create a far different result from what you anticipated.

In some states, especially non-community property states, the division of property can affect how much alimony is awarded. For example, if one spouse gets a house with no mortgage, plus rental properties that produce a good income, a court is not likely to award a high amount of alimony. You will have an opportunity to examine the interplay between alimony and your property division in Chapter 19.

## **Financial Realities**

Generally, court-ordered alimony does not provide adequate money to live on. Often there’s a big gap between the amount that’s needed to live on and what the recipient actually gets.

To understand the financial reality of alimony, you must know what it really costs for you to live. Then you need to develop strategies for making up the difference between true living expenses and the amount you will receive in alimony. As you work through this section, you will look at the tax consequences of alimony as well as practical matters such as when, where, and how payments should be made. Remember, alimony income is risky. It can be stopped, reduced, or increased any time circumstances change.

## **Emotional Realities**

Since the advent of no-fault divorce, many couples no longer vent their anger in knock-down, drag-out fights in court. That doesn't mean the anger isn't there; it just manifests itself differently. That repressed anger may lead to fights over alimony, an item directly tied to a person's survival. You may be moving along nicely in the negotiations only to find that when you get to the alimony, your spouse suddenly makes unreasonable demands or starts playing tricks. Focusing on the legal and financial questions below will help you guard against emotional sabotage.

## **Steps to a Settlement**



As you move through your divorce, you may find that your choices about alimony are guided by the local court's financial schedules. For instance, if a schedule shows that a person in your situation should get \$500 a month in alimony, your spouse will probably use that number, at least as a starting point.

While you need to be aware of any schedule used in your area, don't rely on those figures in determining the amount you will pay or receive. By answering the following questions, you can analyze the financial consequences of paying or receiving alimony.

1. How much do you need to live on?
2. What, if any, are the financial schedules for alimony in your area?
3. How much alimony do you need—or can you afford to pay?
4. Are there alternatives to paying or receiving monthly alimony?
5. What is your bottom-line decision on paying or receiving alimony?

## How Much Do You Need to Live On?

If you've completed the *Cash Flow Statement* in Chapter 12, you have already tracked your living expenses. If not, go back now and use the statement to outline these costs. Whether you will pay or receive alimony, your goal is to get a realistic picture of your household expenses. If your spouse demands more than you feel you can afford to pay—or offers less than you feel you need to live on—you will have to document the cost of your lifestyle. Yes, that lifestyle will probably change after divorce, but for now you need to establish a baseline for expenses.

While you're documenting your own cost of living, estimate your spouse's expenses as well. You will need this information when you are negotiating. If you can't settle, the court will require that you each submit documentation of your income and expenses at trial.

### If You Have Children

In calculating your expenses, don't overlook the special costs generated by children, such as allowances, piano lessons, child care, braces, Little League uniforms, and the like. You will need to make a list of ordinary and extra expenses. Some of those expenses may be listed on your *Cash Flow Statement* from Chapter 12. Other expenses are listed in "What Does It Cost to Rear Your Children?" above.

Check the monthly average figures from your *Cash Flow Statement* in Chapter 12 and other documentation containing your marital costs to estimate the following:

\$ \_\_\_\_\_ *My personal monthly expenses*

\$ \_\_\_\_\_ *My spouse's monthly expenses*

## **What, If Any, Are the Financial Schedules for Alimony in Your Area?**

As mentioned previously, a number of counties have adopted informal financial schedules to help judges—and spouses—set alimony. Be sure to ask your lawyer whether your county follows such a financial schedule or guideline.

More likely, alimony is determined based on the factors listed above. In addition, there's a trend for courts to follow principles such as these:

- If a marriage lasted less than five years and the couple has no children, many courts will deny alimony altogether, or award very short-term alimony.
- If there are children below school age, most courts will order some alimony.
- If a marriage lasted at least eight years, most courts make an alimony award to try to assure a continuity in the standard of living for both spouses.
- In marriages that lasted at least ten years, most courts will award alimony indefinitely, or at least until the recipient dies, remarries, cohabits, or no longer needs support.

Based on those factors, judges—and attorneys who regularly appear before those judges—estimate the amount of alimony to be paid or received. There's no universal formula or rule that applies. The amount of an alimony award, perhaps more than any other decision a judge can make, is seldom subject to challenge but often leaves ex-spouses very angry.

To get an estimate of the amount of alimony you may have to pay or are likely to receive if the issue is presented to a judge for decision, you will need to speak to an attorney or mediator to determine local practice and custom. And remember, if you can't agree, you leave your fate to a judge whose decision may not meet your expectations.

## **How Much Alimony Do You Need—Or Can You Afford to Pay?**

Figuring out how much alimony you need or can afford to pay centers on three concerns—income needs, taxes, and payment practicalities.



## Income Needs

Only a hard look at the income-alimony gap can reveal potential problems. If you come to terms with this gap, you have a better chance of closing it. Here are a few suggestions if you, like many divorcing people, find that you run out of money before you run out of month:

- Cut expenses to reduce your debt load as much as possible.
- Do not use credit cards to finance your lifestyle.
- Take on a second job.
- Rent out part of your home to offset mortgage costs.
- Sell an asset and use the money to pay off debts.

Calculate how you would fare today if you had no option other than to pay or receive the alimony amount mandated by local custom or financial schedule. Then brainstorm about possible plans for resolving any budget problems you may face. Write your answers below.

*Don't despair:* In negotiating the overall settlement, you may get enough property or other assets to replace the loss of income caused by the divorce. You can explore this possibility in Chapter 19.

| Alimony Recipients                                                      |    |
|-------------------------------------------------------------------------|----|
| Monthly expenses:                                                       | \$ |
| Estimated alimony I will receive and my other net income (after taxes): | \$ |
| Difference:                                                             | \$ |
| How I will make up any shortfall:                                       |    |

| Alimony Payers                                        |    |
|-------------------------------------------------------|----|
| Monthly net income:                                   | \$ |
| Estimated alimony I will pay and my monthly expenses: | \$ |
| Difference:                                           | \$ |
| How I will make up any shortfall:                     |    |

## Taxes

To understand taxes and alimony, remember this basic rule: Alimony is tax deductible to the payer and taxable as income to the recipient, but only if the alimony is based on an agreement in writing (such as your divorce settlement papers) or is ordered by a court and very stringent rules are followed. If you do *not* want alimony to be taxed as income for the spouse receiving it, or to be a tax deduction for the spouse paying it, that preference may be spelled out in your marital settlement or separation agreement, or specified in a court order.

### Factors to Consider in Making Alimony Nondeductible

A payer might not want to deduct alimony in any of the following situations:

- The payer can't use the alimony deduction—that is, if taxable income is low or income comes from nontaxable sources, such as tax-exempt bonds, Social Security benefits, nontaxable pension benefits, or nontaxable annuity payments.
- The payer expects other deductions (such as net operating loss carryovers from a business) to equal or exceed gross income.
- The recipient is in a higher tax bracket than the payer.
- After the divorce, the recipient sold property to the payer and does not want the proceeds to be considered income.

If your taxes are particularly complicated, you will need to consult with your accountant to fully understand alimony's tax consequences. Ideally, you and your spouse (or your respective attorneys or accountants) should figure the tax consequences for each of you and fashion an agreement in which each person can receive the greatest number of after-tax dollars. Many attorneys and financial planners have computer programs that can make these calculations. In addition, consider the following points:

**Recipients.** All too often, the person receiving alimony treats it as “free” money, as in “tax free.” On April 15, however, you may find yourself scrambling to pay income taxes on it. Be sure you manage your money in such a way that you put aside enough to cover this bill by making extra estimated tax payments.

**Payers.** Keep careful records of the payments so you can deduct them properly. And obviously, you want to be sure the alimony award is in writing or is ordered by the court.

You can deduct alimony even if you do not itemize your deductions. In addition, you must provide your ex-spouse's Social Security number on your tax return (and you must use Form 1040—not Form 1040A or 1040EZ). If you fail to do so, you may lose your entire alimony deduction and/or be penalized \$50 for each failure to report per return.

To be deductible, alimony payments must meet the following conditions:

- There must be no obligation to pay after the death of the recipient.
- The payments must be made under a “divorce or separation instrument.” These terms refer to a decree of divorce or separate maintenance, a written marital settlement or separation agreement, or a court order or temporary decree.
- The payer and recipient cannot file a joint income tax return.
- The payments must be in cash for a definite amount. Cash paid to cover the rent, mortgage, taxes, tuition, health insurance, or medical expenses of the recipient also qualify.
- Payments cannot be made to an ex-spouse living under the same roof after a final decree of divorce or legal separation.
- The payments cannot be disguised as child support.

The following payments qualify as alimony for tax purposes, assuming all of the preceding conditions are met:

- Premium payments on term or whole life insurance if the recipient of alimony is also the owner of the policy.
- Payments of the recipient spouse’s attorneys’ fees.
- Payments of the recipient spouse’s rent.
- One-half of the payments for mortgage (principal and interest), taxes, utilities, and insurance on a residence co-owned by the payer and the recipient and held as tenants in common.
- Payments for mortgage (principal and interest), taxes, and insurance on a residence owned solely by the recipient.
- Payments made after a remarriage of either spouse as long as the divorce agreement specifies that payments will continue.
- Payments made under an annulment decree, provided your state treats alimony after an annulment the same as it treats alimony after divorce.
- Some allotments for those in the military may qualify as deductions. See a military advisor for more details on this possible deduction.

The following payments are not deductible as alimony for income tax purposes, even if all of the above conditions are met:

- The fair rental value of property owned by the payer and used by the recipient.
- Payments (including mortgage, taxes, and insurance premiums) to maintain property owned by the payer and used by the recipient. (These payments may qualify as a homeowner deduction for the payer, however.)
- Payments made to a recipient as the beneficiary of the payer's estate, if the payer dies. The recipient, however, must report the payments as income.
- Monthly allotments that represent an allowance for military quarters are nontaxable. In situations in which a court orders alimony paid from these allotments, the military person cannot deduct the payments. But alimony deducted from regular pay is deductible and taxable.
- If the spouses obtain a court order retroactively reclassifying equalization payments (to even up the property division) as alimony, the new "alimony" is not tax deductible.
- Payments made from a trust (alimony trust) set up to pay support, though the recipient spouse must include it as taxable income.

### Alimony or Property Settlement Payments?

When your divorce settlement is being written, it is important to understand how alimony payments are structured. In some cases, the court may consider these payments as property being divided in the divorce. That matters to you because the payments may be subject to tax laws that differ from those involving a property transfer.

To qualify as alimony, the payments need not cease at remarriage, though they must terminate at death. In one case (*Prater v. Commissioner*, 95-1USTC ¶ 50,271 (10th Cir. 1995)), payments made by one former spouse to the other out of proceeds from an oil and gas lease were considered alimony even though there was no mention of these payments ceasing upon remarriage. The court held that even though the payments did not cease upon remarriage, the provision that they cease upon the recipient's death meant that the payments should be characterized as alimony.

In another case (*Hoover v. Commissioner* (Tax Court Memo 1995 ¶ 95,183)), the divorce decree awarded the wife the home, furnishings, and "alimony as division of equity." That was because the final divorce decree did not contain a provision that all payments would cease upon death or remarriage, although the husband was to provide medical insurance until his former wife died or remarried. Because the liability for these payments did not cease upon the death of the ex-wife, payments were deemed a property settlement and not alimony, in spite of what the divorce decree called them.

Payments are regarded as part of the property settlement when:

- the sum is fixed
- the payments are not related to the payer's income
- the payments are to continue regardless of the recipient's death or remarriage
- in exchange for the payments, the recipient gave up more property than the payer or gave up some other valuable right in the property settlement, and
- the payer has put up security to ensure payment.

## The IRS Is Watching for “Frontloading”

Alimony is deductible by the payer in the year it's paid, as long as it hasn't been “frontloaded.”

“Frontloading” does not describe a type of clothes dryer. It's a method some divorcing couples use to load up on tax-deductible alimony. Sometimes one spouse will pay a great deal of alimony the first year and then reduce it dramatically in later years. Or, a spouse will give the other some property, but call it alimony. In both cases, the IRS will want its share of money in taxes.

**EXAMPLE 1:** Biff will be paying Kit a total of \$66,000 in alimony. He decides to pay her \$44,000 the first year and \$11,000 the second and third years. Biff is clearly frontloading his payments—paying most of the alimony in the first year to get a bigger tax break. The IRS will recompute Biff's taxes at the end of the third year and slap him with a bill to recapture the tax break he got the first year.

**EXAMPLE 2:** This time, Biff pays Kit \$12,000 in cash and \$30,000 for her new BMW in the first year. Even though only \$12,000 was for the alimony itself, Biff deducts all \$42,000 and calls all of it alimony. Biff plans to pay Kit \$12,000 a year for the next two years to come up with the total \$66,000. Again, Biff is clearly frontloading, and the IRS will hand him a bill at the end of the third year.

Biff could have avoided the frontloading charge by simply paying Kit \$22,000 per year for each of the three years—without dramatically decreasing the amount or trying to pass off the transfer of the BMW as alimony. In general, the IRS rules against frontloading kick in if, during the first three years, the payments in one year exceed the payments in a succeeding year by more than \$15,000.

Suppose, however, that Biff pays a large amount of alimony during the first year—more than \$15,000—then loses his job and is able to have his payments greatly reduced. Even though he was not trying to trick the IRS, the frontload rules could nevertheless be triggered, and he could owe substantial taxes. Biff can protect himself with a tax indemnification agreement from Kit, which would make her responsible for such unintended tax consequences.

## Payment Practicalities

If you will receive or pay alimony, you must be careful not to overlook the details involved in continuing a financial connection with your ex-spouse. Below are questions and suggestions to cover payment practicalities. Whether you deal with these items as your negotiations progress or wait until the final settlement, use the spaces provided to jot down your ideas, which you can refer to later when needed. Put a check mark in front of the question once it is resolved.

\_\_\_\_\_ *How will alimony payments be made?*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you're the recipient, you basically have four choices:

- You can wait for the proverbial "check in the mail."
- You can set up a wage deduction through your ex's employer, then have that money automatically deposited (through direct deposit plans) into your bank account.
- You can set up a voluntary account deduction through your ex's bank, then have that money automatically deposited into your bank account.
- You can have your lawyer prepare a QDRO (qualified domestic relations order) specifying that payments come directly from your ex's retirement plan.

Most recipients wait for the check, but it is becoming more common for courts to order wage assignments or garnishments, especially when the payer is also paying child support. Whatever you arrange, be sure the details are clearly outlined in writing.

\_\_\_\_\_ *On what day of the month will alimony payments be made?*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Payers usually find it most convenient to pay alimony shortly after receiving their salary checks or other income. If you are a recipient and payments won't arrive until after your mortgage, rent, or some other large monthly bill is due, you'll need to rearrange your budget. Try to manage your cash flow so there's some money left over from the previous month. If that won't work, contact the lender and ask that your payment date be pushed ahead to correspond with your cash flow—you don't need to tell the lender you're waiting for your alimony check unless the lender pushes the question. Most lenders will make arrangements to accommodate payments.

\_\_\_\_\_ *How long will alimony payments be made?*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

It's becoming uncommon for alimony payments to be ordered indefinitely. And even in "indefinite" arrangements, alimony almost always ends if the recipient remarries or the payer retires. It usually ends if the payer dies, too. Sometimes, alimony lasts for a set number of years—often for the length of time it takes for the recipient to get training to reenter the workforce or, sometimes, to allow the recipient to stay home with young children.

Whatever your arrangement, pay close attention to the termination date. Suppose you are to receive alimony until September 30 of a certain year, based on the assumption that you will return to school, graduate in June of that year, and use the summer to find a job. What will you do if your education and career path don't work out as planned? You can usually go back to court and ask for an extension of the alimony, *but only if you make your request before the scheduled termination date*. If you wait until after the September 30 termination date, you're probably out of luck, because the court will have "reserved jurisdiction"—kept the power to make decisions—only until September 30 of that year.

When there is no termination date, alimony is generally modifiable upward or downward depending on a former spouse's continued ability to pay and the other spouse's need.

## Records to Keep When You Pay or Receive Support

You must keep adequate records if you are paying or receiving alimony. This point cannot be overemphasized. Frequently, after a divorce, the spouses dispute, or the IRS challenges, the amounts that were actually paid or received. Without documentation, the payer may lose the alimony tax deduction and be ordered to pay back support if the other spouse makes a claim in court.

### Payer

Here are suggestions of records to keep:

- a list showing each payment (date, check number, place where sent)
- original checks used for payments or bank copies of your cancelled checks showing both the front and the back (keep in a safe place, such as a safe-deposit box)—be sure to note on each check (before you send it) the month for which the support is being paid, and
- a receipt signed by the recipient, if you pay in cash.

Be sure to keep these records for at least three years from the date you file the tax return deducting the payments. You might want to keep them even longer, if, for example, your ex-spouse has more than three years to sue you for any claim that you owe back support.

### Recipient

Make a list that shows each payment received. Include the following information:

- date payment was received
- amount received
- check number or other document identifying the number (for example, the number of the money order)
- account number on which any check was written
- name of bank on which check is drawn or money order issued
- a photocopy of the check or money order, and
- a copy of any signed receipt you give for cash payments.

\_\_\_\_\_ *How will you handle future economic changes,  
such as inflation or salary increases?*

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If your alimony payment does not change, the amount it can actually buy year to year is sure to decrease. That's inflation. It's possible to take inflation into account in your alimony agreement with a COLA—cost of living adjustment—clause. Some couples tie COLA increases to the rise in the Consumer Price Index (CPI); others simply choose a specific dollar amount.

Similarly, couples can avoid extended bitterness over alimony arrangements if they face the question of salary increases in advance. Will the recipient get a share of the payer's raise? Will the recipient's raise mean the alimony payment decreases? Be sure you know ahead of time how these questions will be handled.

\_\_\_\_\_ *What life or disability insurance policies will  
cover your ex-spouse?*

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If you are dependent on someone else for your income, what will you do if that person becomes disabled or dies? If you will be the alimony recipient, you'll want to make sure you have appropriate insurance coverage on your ex-spouse. You could purchase a life insurance policy on your ex. Or your ex could buy life and disability insurance—naming you as the beneficiary—to protect your income stream. To get a tax deduction on the insurance premiums, the payer can pay the premium money to the recipient by increasing the alimony and having the recipient make the insurance payments. The alimony recipient must be the absolute owner of the policy. (Remember, however, an increase in alimony may increase the recipient's income taxes.)

\_\_\_\_\_ *What will happen if the payer tries to modify the alimony payments or stops paying altogether?*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you are the payer and you cannot afford the amount of alimony you've been ordered to pay, you must file for modification of the order with the court. At your hearing, you must show a material change in circumstances since the last court order. Your ex-spouse's cohabitation with someone of the opposite sex may qualify, especially in Alabama, Georgia, Illinois, New York, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia, where such cohabitation raises a presumption of a decreased need for alimony.

Another common reason for changing alimony is your decreased income. Where you have voluntarily decreased your income, however—for example, you quit your job as a doctor to work in a pastry shop—the judge may consider your ability to earn, not your actual earnings.

If you are a recipient and your ex stops paying, you will need to go to court. Most likely, you will have to schedule a hearing in which your ex-spouse is ordered to come to court and explain why he or she isn't paying. You can also ask the court to grant you a judgment for the amount owed, or "in arrears." You can then use judgment collection methods, such as wage attachments and property liens, to try to collect the arrears.

### **Alimony and Bankruptcy**

Alimony cannot be erased in bankruptcy. If your ex owes a substantial amount and tries to have it wiped out in bankruptcy, you will be protected so long as you follow bankruptcy laws and procedures. For more on bankruptcy and divorce, see Chapter 17.

## Are There Alternatives to Paying or Receiving Monthly Alimony?

While financial schedules and legal guidelines help establish the amount of alimony, they don't require any certain payment arrangement. Although alimony is traditionally paid monthly, it is possible to pay it in a lump sum, periodically, or combined with child support.

### Lump Sum Alimony

A lump sum settlement of alimony upon divorce is sometimes called an alimony buyout. Before agreeing to a buyout, consider its pros and cons.

#### For the Recipient

There are four major advantages to accepting a lump sum settlement:

- You reduce the risk of depending on someone else—who could default, become disabled, or die—for income. Reducing the risk of depending on someone who could default is important—alimony default rates exceed 50% in many places.
- You can use the lump sum for a down payment on a house or other purposes, such as paying bills.
- If you have no children, you can terminate any further contact with your ex-spouse.
- If the lump sum is characterized as nontaxable alimony, it is not taxable to you as the recipient.

There are also disadvantages to a buyout:

- You lose a steady flow of income.
- Once you accept a lump sum payment, you cannot go back to court to reinstate alimony.
- You may receive less than you would have in monthly payments. You and your soon-to-be-ex-spouse may agree on a lower amount just to get rid of each other. Also, had you written a COLA (cost of living adjustment) clause into your settlement, your payments would have risen over time, a consideration usually not factored into a lump sum payment.
- You run the risk of losing some or all of the lump sum payment through bad investments or other unforeseen circumstances such as a debilitating illness.

**For the Payer**

There are three major advantages to making a lump sum settlement:

- Because writing a monthly alimony check to a former spouse can be a grating experience, which creates resentment and ill will after the divorce, a lump sum may be easier emotionally.
- If you have no children, you can end the marriage with a strong sense of finality.
- Because a buyout compresses all future payments into one present payment, the total is often discounted for taxes and is less than what would have been paid over a set number of years. For example, Mitch agrees to pay Sara \$1,000 per month for the next five years, for a total of \$60,000. Mitch figures inflation is around 4%, and in today's dollars, \$60,000 is worth only \$54,480. Mitch offers that amount less taxes in a present-day lump sum settlement.

There are also disadvantages to a buyout:

- You have to come up with a large sum of money.
- Under standard alimony plans, payments cease if the recipient dies, remarries, or, in some cases, cohabits with someone of the opposite sex. You could pay a lump sum at divorce only to watch your ex remarry in a year.
- Because a buyout cannot be renegotiated, you could end up paying more in the lump sum than might have been required. For instance, if your ex obtains a high-paying job or your income drops a great deal, you might have been able to reduce the monthly alimony payments.
- Your payment might trigger the frontloading rules, or it could look like a property settlement payment if it's paid over less than three years and the annual amount exceeds \$15,000. If you are not going to pay the entire buyout in one year, the IRS could interpret the arrangement as frontloading and assess taxes at the end of the third year.
- If the lump sum settlement is less than \$15,000, it would be tax deductible. Otherwise, it may trigger the frontloading rules, and a portion of it would not be tax deductible.

### **Transferring Assets to the Recipient in Exchange for Alimony**

Certain assets, such as the house, stocks, or a pension plan, could be given to your spouse in exchange for her releasing you from an obligation to pay alimony. You may want to consider this option if you do not relish the idea of making monthly alimony payments or if you are strapped for cash and the payments would make your budget tighter.

You might also consider this option if you don't want to hold assets on which you may have to ultimately pay capital gains taxes, or if you want to sever all financial ties with your soon-to-be-ex-spouse.

Exchanging property for alimony, however, means you would not get the tax deduction you get from making alimony payments. But you may nevertheless want to consider this option when negotiating the final settlement.

### **Family Support**

Sometimes, alimony and child support are combined into one monthly payment called family support. If the payments meet all the requirements of alimony, they may be fully taxable to the recipient and tax deductible to the payer.

Recipients of family support enjoy one advantage if a payer defaults. In that situation, the recipient has numerous child support collection techniques available. If the payer defaults on alimony payments, the only collection method in most states involves taking the payer to court. Be warned, however, that a growing number of courts are disallowing family support, not wanting to burden the child support collection bureaus with collecting what is really alimony.

### Special Problems When Alimony and Child Support Are Combined Into One Payment of Family Support



If a family support payment is reduced, and the reduction is related to any of the events listed below, the amount by which the support is reduced will be treated like child support, not alimony. This can be a problem. The IRS may classify your former payments as child support, not alimony, and recompute your taxes to disallow the alimony deduction. The Internal Revenue Code does not recognize the concept of family support, classifying payments for tax purposes as either child support or alimony.

Events that can cause “family support” payments to be classified as child support include:

- a child reaching a specified age
- the death of a child
- a child leaving school
- a child leaving the household of the custodial parent, and
- a child becoming employed.

To avoid having the payments treated like child support (and losing the tax deductibility of the payments), don’t base the reduction of family support on any contingency related to the child’s age or needs. If you have more than one child, again, don’t tie in the reduction to the date when each child reaches a certain age. Finally, don’t call your support “family support” if your children are near the age of majority (usually 18 or 21).

### What Is Your Bottom-Line Decision on Paying or Receiving Alimony?



You may have little choice about the amount of alimony payments, but you must nevertheless make decisions about alimony. Will you negotiate for a lump sum buyout? Will you use alimony as leverage in



negotiating for other assets? Use this space to describe your bottom-line decision on alimony payments so you can easily refer to this information in Chapter 19 when you bring all your decisions to the negotiating table.

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## Questions to Ask an Attorney



1. If you live in a community property state: Will my payment of alimony before our divorce is final be deductible, or is it considered an allocation to my spouse of community income? If it isn't deductible, can a separation agreement or final divorce decree be written so as to make it deductible?
2. What conduct might jeopardize my right to custody of my children? Am I permitted to move away if I have custody? If I don't have custody and my ex-spouse wants to move with the children, can I fight for custody or block the move?
3. What formula is used to calculate child support in my state?
4. Does child support in my state cover all child-related expenses, including medical, clothing, allowances, and child care? If not, what expenses does child support cover, and who pays for the other costs?
5. What will I do if my spouse falls behind in child support or alimony?
6. How does the court enforce child support and alimony orders?
7. Is it wise to arrange for "family support" payments instead of child support?
8. How will alimony or child support be affected if a parent receives government welfare benefits?
9. If my ex-spouse remarries or takes a new partner, does that affect his or her obligation to pay or receive child support or alimony?

**Sample Qualified Medical Support Court Order**

- A. \_\_\_\_\_ (Name of Party) \_\_\_\_\_ is ordered to maintain in full force and effect all health insurance coverage, including medical, dental, hospital, and health maintenance, available at reasonable cost through employment and/or other group health insurance plan, and to pay premiums on that coverage.
- \_\_\_\_\_ (Name of Party) \_\_\_\_\_ is also ordered to maintain the minor child(ren) \_\_\_\_\_ (Specify) \_\_\_\_\_ as alternate recipient(s), entitled to enroll in the group insurance plan, until such minor child(ren) attain majority, are emancipated, die, or marry, or until further order of this Court.
- B. In the event that such health insurance coverage is not available at the entry of this judgment but subsequently becomes available at no cost or reasonable cost to \_\_\_\_\_ (Name of Party) \_\_\_\_\_, \_\_\_\_\_ (Name of Party) \_\_\_\_\_ is ordered to notify the Court and opposing party and to apply for that coverage.
- C. The group health insurance plan that is the subject of this order is available through \_\_\_\_\_ (Employer or Other Group) \_\_\_\_\_. Coverage is provided by \_\_\_\_\_ (Name of Insurance Company) \_\_\_\_\_ and coverage is for \_\_\_\_\_ (Description of the Type of Coverage Provided by the Plan) \_\_\_\_\_.
- D. The employer of the plan participant (if the group health insurance is available through employment) is ordered to enroll the child(ren) as alternate recipients in the group health plan.
- E. The insurance company is ordered to provide coverage to the child(ren) of the plan participant as alternate recipients even if the child(ren) were born out of wedlock, do not live with plan participant, are not claimed as dependents on the plan participant's federal income tax return, or live outside of the plan's service area.
- F. The insurance company is ordered to reimburse the custodial parent directly for covered medical expenses paid by the custodial parent on behalf of the alternate recipients. The insurance company shall not pay such reimbursement to the plan participant.
- G. The name and last known mailing address of the party ordered to maintain health insurance (the "plan participant") are:
- \_\_\_\_\_
- \_\_\_\_\_
- H. The name and mailing address of the alternate recipient(s) are:
- \_\_\_\_\_
- \_\_\_\_\_



## Negotiating and Finalizing the Best Possible Settlement

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|                                                  |     |
|--------------------------------------------------|-----|
| Have You Done Your Financial Homework? .....     | 404 |
| Tallying Your Marital Balance Sheet .....        | 405 |
| How Are the Offers and Counteroffers Made? ..... | 410 |
| How Do You Finalize the Settlement? .....        | 413 |
| Divorce Ceremonies .....                         | 415 |

*Until this stage of the divorce, you have focused on your personal, individual decisions—that is, the things you “want” in your divorce. But how will you get what you want? Through negotiation.*

Negotiating a divorce settlement is a process of offers and counter-offers. You and your spouse may be able to compromise and reach a settlement easily, or your demands and those of your spouse may run headlong into each other. Some couples state their terms and reach a settlement in hours, while others go through years of bitter fighting.

Your settlement negotiations will probably bear an uncomfortable resemblance to the dynamics of your marriage. If your spouse has been rigid and demanding throughout your relationship, do not expect him or her to suddenly become flexible and reasonable in a settlement conference. Similarly, an uncommunicative mate will probably give you the “silent treatment” as you attempt to complete the settlement. Anticipating your spouse’s most likely behavior can make it easier for you to accept and move through the negotiations.

Your decisions—and actions—become crucial in this phase, because you are playing for keeps. Once the settlement is final, it is costly, time-consuming, and almost impossible to modify it. Better to make changes to the settlement before you complete it, rather than try to alter it later.

In this chapter, you will address three basic issues regarding negotiating the settlement:

- Have you done your financial homework?
- How are the offers and counteroffers made?
- How do you finalize the settlement?

## **Have You Done Your Financial Homework?**

Imagine walking into a room and sitting across a table from your spouse and his attorney. The attorney smiles while going through a long list of items that your spouse is prepared to “give” you if you will simply forfeit any claim to the items that are on your spouse’s much shorter list.

The attorney points out that the dollar amount on the bottom line of both lists is equal. Surely you should agree to such a fair and equitable offer.

But should you?

You can't know whether or not the offer is fair unless you've done your homework. If you've worked through the previous chapters in this book, you should be able to accept or reject your spouse's offer relatively quickly. If you haven't read the prior chapters—analyzing your assets and debts, and understanding alimony and child support—you're apt to accept an offer that is a bad financial deal for you, regardless of how “equal” the dollar amounts on the bottom line appear to be.

You must know where you stand financially before you negotiate the settlement. We cannot stress this point enough. If you have not already done so, go back and read the material relevant to your divorce from Chapters 12 (property and expenses), 13 (house), 14 (retirement plans), 15 (investments), 16 (employee benefit plans), 17 (debts), and 18 (alimony and child support). Even if your spouse has made an offer—or is preparing to counter an offer you've made—take no further steps until you have analyzed the financial consequences of any proposed settlement.

## Tallying Your Marital Balance Sheet

In Chapter 12, you filled out the detailed *Assets and Liabilities Worksheet*. Now, as you reach the crucial point of your negotiations, that attention to detail will pay off.

You can now devise your *Marital Balance Sheet*, a key tool in arriving at a settlement. With the information you've assembled, achieving a fair division of the assets and debts—the goal of every divorce proceeding—should be infinitely easier.

Refer back to the *Assets and Liabilities Worksheet* in Chapter 12. Make note of what property is jointly owned or owned by the spouses individually. Note also the equity or legal value in the last column. Then enter that information in the appropriate columns below. This will be a bit of a chore, but it's important. This is what you've been working toward.

Once you've entered that information, take a moment to study the overall picture. Think about which assets you want to keep and which ones you want to be rid of or are willing to give up. Bear in mind that what each person gets will also be an important element in deciding what, if any, amount of child support and alimony is ordered.

Begin by preliminarily dividing the property as you would ideally like to see it divided. First, consider which property each spouse would prefer to have and “deserves” to have. For example, if the equity or legal value of your house is \$150,000, and you and your spouse each contributed equal amounts of separate property for the down payment, you would logically have a 50-50 share of the equity, or \$75,000 apiece before taxes. But if you contributed unequal amounts for the down payment, that figure may need to be adjusted. Similarly, try to determine the stake each of you has in other assets based on who acquired them and with what funds.

The assets and liabilities listed in Chapter 12 are very detailed and specific. Here you’re going to be grouping them—investments, collections, real estate, and so on—to get an overall sense of how they could be divided. Inequities will naturally develop. Allocate enough of the value of joint property to the spouse with the shortfall to roughly equalize the respective values. Your negotiations will determine who actually gets what. This exercise will greatly help prepare you for those negotiations.

Look at specific items of jointly owned property to identify those that can be transferred in whole from joint names into the sole name of one party to equalize the values. Consider trading property interests of similar value—say, the wife’s interest in the husband’s pension for the husband’s interest in the family home.

When you get to the bottom of each portion of the *Marital Balance Sheet*, check how close you’ve come to having equal allocations. Make note of any equalizing payment that would be required to bring the allocations into balance.

## Dividing Miscellaneous Property

The bulk of your divorce may focus on splitting the miscellaneous items, such as furniture, books, electronic equipment, appliances, kitchenware, tools, and the like. The easiest way to divide these items is to make a list of *everything you jointly own*—this includes wedding gifts and joint inheritances—and write your name or your spouse's name next to each item, depending on who wants what. Give the list to your spouse. Ask your spouse to note those items on which he or she disagrees with your assignment of ownership. Then sit down together and review the items in dispute. If you can't resolve your differences, here are three suggestions:

- Flip a coin. The winner gets first choice of the disputed items. Alternate selecting until the list is exhausted.
- Put the disputed items on your settlement chart and divide them as you negotiate the settlement.
- Find a mediator to help you divide what's still on the list.

This property may not be worth the time you spend fighting over it. Do not let the issue of dividing the silverware and the CD collection interfere with your negotiations over more financially significant assets such as the house or either spouse's retirement plan.

| Marital Balance Sheet                                                         |                              |                           |
|-------------------------------------------------------------------------------|------------------------------|---------------------------|
| Division of Jointly Owned Property                                            |                              |                           |
| Equity or Legal Value<br>(from Chapter 12)                                    | Allocation to Husband        | Allocation to Wife        |
| <b>Assets:</b>                                                                |                              |                           |
| Marital Home                                                                  |                              |                           |
| Rental House                                                                  |                              |                           |
| Real Estate                                                                   |                              |                           |
| Investments                                                                   |                              |                           |
| Stock Account                                                                 |                              |                           |
| Savings                                                                       |                              |                           |
| Checking                                                                      |                              |                           |
| Money Fund                                                                    |                              |                           |
| Mutual Funds                                                                  |                              |                           |
| CDs                                                                           |                              |                           |
| Automobile 1                                                                  |                              |                           |
| Automobile 2                                                                  |                              |                           |
| Furnishings                                                                   |                              |                           |
| Art Works                                                                     |                              |                           |
| Collections                                                                   |                              |                           |
|                                                                               |                              |                           |
|                                                                               |                              |                           |
| <b>Debts:</b>                                                                 |                              |                           |
| Credit Cards                                                                  |                              |                           |
| Credit Line                                                                   |                              |                           |
| Bank Loan                                                                     |                              |                           |
| Family Loan                                                                   |                              |                           |
| Other Debt                                                                    |                              |                           |
| <b>Jointly Owned Property Divided</b>                                         |                              |                           |
| Equalizing Payment, if any                                                    |                              |                           |
| <b>Husband's Property Divided<br/>Equity or Legal Value (from Chapter 12)</b> | <b>Allocation to Husband</b> | <b>Allocation to Wife</b> |
| Husband's Property                                                            |                              |                           |
| Equalizing Payment, if any                                                    |                              |                           |
| <b>Wife's Property Divided<br/>Equity or Legal Value (from Chapter 12)</b>    | <b>Allocation to Husband</b> | <b>Allocation to Wife</b> |
| Wife's Property                                                               |                              |                           |
| Equalizing Payment, if any                                                    |                              |                           |



**Summary of Property Division**

| Equity                             | To Husband | To Wife |
|------------------------------------|------------|---------|
| Joint Property                     |            |         |
| Husband's Property                 |            |         |
| Wife's Property                    |            |         |
| Total Division                     |            |         |
| Overall Equalizing Payment, if any |            |         |

**When Not to Keep the House**

After Janet divorced she found herself paralyzed, though not physically. Because of decisions she made during her divorce, she could not afford to move from her home.

Janet owed \$60,000 to her uncle—he lent her the money so that she could buy out her husband. If Janet were to sell the house, she'd first have to pay her uncle. Then she'd have to pay taxes on any profit from the sale that exceeded \$250,000. Janet wants a small condo worth less than her house. Between payments to her uncle, taxes she would owe on the profit, and the lower market price of her house due to slumping real estate values in her area, she would have barely enough left for a down payment on a new place.

Janet's goal is to keep her monthly house payment low. In her current home, she pays only \$950 per month. After Janet repays her uncle and puts money aside for the taxes, she will have a little money left over from the sale of the house that she can use as a down payment on the condo. She'll still have to finance the deal. If she took a 30-year loan at 7.5% interest, her monthly payment would be \$1,250—\$300 more per month for housing than she pays now. And she simply cannot afford it on her current salary.

"It's ironic," Janet now muses. "I fought so hard to keep this house, and now I have to keep it whether I want to or not. I'm so busy at work that I hardly have time to mow the lawn, and I've had to rent out two rooms just to keep everything going. If I had it to do over again, I'd have sold the house during the divorce and started fresh."

## How Are the Offers and Counteroffers Made?

Once you have a good grasp of your *Marital Balance Sheet*, you can begin the negotiations. In many settlements, the spouses will agree to each other's terms on several issues. To resolve the remaining issues, the couple—perhaps with the help of a mediator or their attorneys—meet or correspond until all issues are settled. Once the details are settled, they are recorded in a settlement agreement. The settlement agreement is then taken to the court for a judge's approval. Unless an agreement contains a clause leaving the children unsupported, a judge will approve the agreement as a formality.

### Don't Be Discouraged

In spite of doing your financial homework and the hard work of preparing for settlement negotiations, you may still go through numerous settlement conferences in attempting to hammer out an agreement. Some cooling-off time may be needed between offers and counteroffers because of charged emotions. Take the time you need and don't give in just because you never want to see your ex again.

Your settlement may not follow the scenario described above exactly. Here are several other possibilities:

#### Scenario 1:

*You and your spouse agree to terms → file your own papers with the court → final decree of divorce is issued → marriage ends.*

This kind of simple divorce usually takes place when couples have been married a short time and have no children or major assets to divide. If you fall into this situation, check to see if there's a good "do it yourself" divorce book written for your state. (See the resources below.) You can also use the services of an independent paralegal to help you type up your papers. Check your phone book under "attorney support" or "typing services."

**Scenario 2:**

*You and your spouse agree to terms on some issues → meet with a mediator to resolve remaining issues → file papers with the court on your own or using an attorney, attorney-mediator, or typing service → final decree of divorce is issued → marriage ends.*

Mediators are discussed in Chapter 7. Remember that a mediator is not an advocate—he or she is a person who helps you and your spouse arrive at a settlement you can live with. Once you settle the issues, a mediator will probably not help you file your court papers unless the mediator is also an attorney. You (or your spouse) can use an attorney for this, but make sure you find a lawyer who will respect the mediation process and your decisions. Otherwise, the attorney may want to get more involved—find out all the issues of your case, figure out why you settled it as you did, and possibly even counsel you to resolve it differently. This can mean you have to start over.

**Scenario 3:**

*You and your spouse—with your attorneys—agree on certain issues → through your attorneys meeting or corresponding, you resolve remaining issues → attorneys file papers with the court → final decree of divorce is issued → marriage ends.*

If you and your spouse cannot settle your case, you'll probably turn to the services of attorneys. The cost will rise and the issues may seem more complicated, but your interests may be better protected. Nevertheless, it is imperative that you retain absolute control over your case. Having come this far in this book, you understand the financial realities of keeping certain assets, assuming (or having your spouse assume) debts, and paying or receiving alimony or child support. Be clear with your attorney as to what is an acceptable and unacceptable settlement. Give your lawyer a copy of the *Marital Balance Sheet* you completed in this chapter.

### Understand What You're Getting

Judy and her husband went through an arduous negotiation process. When they couldn't agree on how to divide their property, they scheduled a trial. A few minutes before they were to go before the judge, they settled the issues in the courthouse cafeteria. Their attorneys initialed papers stipulating the terms of their agreement.

When Judy received her copy of the stipulations, she noticed that her husband's attorney had added language describing her husband's equalization payment—money owed for receiving a greater share of marital property—as a distribution of retirement benefits subject to a Qualified Domestic Relations Order (QDRO). Instead of receiving tax-free payments, Judy would be getting the payment in the form of a fully taxable distribution from the retirement plan. Judy could roll the money into an IRA to defer taxes, but she did not want a taxable asset when she and her husband had already agreed that she would receive the nontaxable equalization payment.

Fortunately, Judy reviewed the settlement agreement carefully and asked her attorney about it. Judy then demanded—and got—a correction. The equalization payment was separated from the retirement benefits, as was originally intended. Her alertness saved almost \$40,000 in taxes.

#### Scenario 4:

*You and your spouse—with your attorneys—agree on certain issues → through your attorneys meeting or corresponding, you resolve some, but not all, remaining issues → attorneys prepare for trial → trial takes place, judge makes rulings → final decree of divorce is issued → marriage ends.*

Throughout this book, we have warned you against letting your fate be decided by a judge, and letting your marital assets be eaten up in lawyers' fees. If, however, all else fails and you must go to trial, then be prepared. Don't be afraid to ask your lawyer what will happen—and how much the lawyer's bill will be. And don't forget that you'll probably have to pay

experts—actuaries, appraisers, financial planners, and the like—if you’re disputing asset values. If you can’t agree on custody, you’ll probably need to bring counselors, psychologists, and others into court to testify. Be prepared for these bills.

### If You Must Go to Trial

In some divorces, all attempts at negotiation break down and couples end up going to court. Before a trial, you will want to:

- Ask your attorney what she thinks are the pros and cons of your position and what other courts have decided in cases like yours.
- Ask which judge you will most likely get and what biases that judge tends to hold.
- Reevaluate the financial and tax implications of your options.
- Reconsider the proposals made by your spouse. Think through their merits and drawbacks.
- Think about the benefits of settling without going to court, such as saving vast legal fees, court costs, and other expenses. What if you pay these expenses and lose anyway?



If you live in California or Texas, check out *How to Do Your Own Divorce in California*, by Charles E. Sherman, or *How to Do Your Own Divorce in Texas*, by Sherman & Simons (both Nolo Occidental).

And wherever you live, you can probably find useful information in *Nolo’s Essential Guide to Divorce*, by Emily Doskow.

## How Do You Finalize the Settlement?

As mentioned earlier, once the issues are resolved and reduced to a settlement agreement, the agreement is then taken to the court for a judge’s approval. Unless it leaves the children unsupported, a judge will sign the agreement.

Usually, when the agreement is taken to court, so are the papers requesting an end of the marriage. Before that, only the complaint or petition requesting that the marriage end—and an answer or response from the other spouse—have been filed. Once the couple resolves the property, debt, custody, alimony, and child support issues, they also usually end their marriage. In some cases, however, you may actually be divorced before you conclude your settlement. In these cases, the divorce process is “bifurcated”—divided in two parts—so that the part ending the marriage is resolved first, and then the issues of property division, debt allocation, custody, alimony, and child support are settled.

Bifurcation is usually used when one party wants to remarry and doesn’t want to wait the many months or years it may take to settle the unresolved issues in the divorce. Our experience is that couples who bifurcate their divorce have little incentive to untangle their finances. Financial discussions tend to drag on, and making a clean break and planning for your own financial future may become more difficult.

### **Tips for Negotiating Your Settlement**

Here are several tips to bear in mind during your negotiations:

- You may not get what you deserve, but you can get what you negotiate.
- Know the least you are willing to get, the most you are willing to give, and the bottom line you are willing to agree on.
- Answer questions clearly and concisely—and without blame.
- Put yourself in your spouse’s position and ask what you’d do if you were your spouse.
- Don’t give in to pressure for the sake of an immediate response.
- Release tension during negotiation sessions; take deep breaths and let them out slowly.
- When difficulties or conflicts arise, use phrases that can help move things forward:
  - “I appreciate what we’ve done so far . . .”
  - “I’d like to settle this on the basis of principle, not power . . .”
  - “Help me understand how you reached that conclusion . . .”
  - “I’m trying to see the point you are making; would you mind clarifying it for me?”

Do not expect a grand parade, or even a telegram announcing the end of your marriage. All you're apt to receive is a notice from the court. After all the drama of divorce, the end can be nothing more than an anticlimactic notice in the mail. You might even need to call your attorney's office or the courthouse to make sure the marriage is really over.

You can, of course, throw yourself a party to mark the occasion—or sleep in and stay under the covers, depending on how you feel about being divorced.

## **Divorce Ceremonies**

Some couples craft a beautiful and touching divorce ceremony to end their marriages and begin their lives anew. An important part of any divorce ritual is to have the leader or clergyperson facilitate the ex-spouses in expressing gratitude for the best parts of their marriage. They recognize aloud what was good about the marriage and about each other. They may speak with pride and joy. Children in attendance can tell their parents how they feel about them and what their expectations are for the future. Friends can express their support and caring for both spouses.

Though it may not be for everyone, a divorce ceremony can be a powerful experience because it offers an opportunity to provide closure to the past and look forward to the future. ■

## After the Divorce: How Do I Get From “We” to “Me”?

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|                                                     |     |
|-----------------------------------------------------|-----|
| How Do I Finish the Business of Divorce? .....      | 418 |
| Can I—Or My Ex-Spouse—Change the Settlement? .....  | 422 |
| What Do I Want to Do With My Life? .....            | 424 |
| If You Have Money to Invest .....                   | 424 |
| If Money Is Tight .....                             | 424 |
| Post-Divorce Financial Planning Tips .....          | 427 |
| Setting Goals After Divorce.....                    | 430 |
| If You Find a New Love, Protect Your Old Assets ... |     |
| and Your Alimony.....                               | 430 |
| Cohabitation Can Be Costly.....                     | 430 |
| Prenuptial Agreements.....                          | 432 |
| How Can I Move Beyond the Divorce? .....            | 433 |



*Congratulations ... you've made it. Your divorce is over, and it's probably a tremendous relief. As far as your financial life is concerned, however, the watchword after divorce is caution—not celebration.*

**J**ust as it was important to avoid spending sprees during the divorce, it's wise to keep your expenses down once the divorce is final. You need time to adjust to your new life. The last thing you want to do is run up big bills that you can't pay.

Similarly, don't let your guard down while you wrap up the details and get ready for life as a single person—or single parent. First, you must be sure to follow through—or see that your spouse follows through—on the settlement you've worked so hard to secure. Be on the lookout, too, for people who try to pressure you into investing your money one way or another. Sit tight. You'll have plenty of time to decide what to do once you've made sure there are no loose ends from your divorce that could trip you up in the future.

## **How Do I Finish the Business of Divorce?**

Forgetting to follow through on details after divorce is one of the easiest things in the world to do. It's also one of the costliest.

During the divorce, you were under tremendous stress. Now, you may be more exhausted than you realize, and that can lead you to overlook important tasks. Even if you're feeling exhilarated instead of exhausted, that state of excitement can lead to overconfidence and a lack of focus on the business at hand.

You could literally lose the property you fought to keep because of simple errors in divorce paperwork. One man lost his vacation home to his ex-wife when she sold it before the deed transferring ownership to him was recorded. Another woman had to pay off debts her ex-husband incurred because she forgot to close a joint account and he refused to pay the bills he ran up.

You've been through too much to drop the ball now. Don't put off legal and financial chores in this postsettlement phase—which is as crucial as any other part of the divorce process. Use the list below to guide you.

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*Title documents*

Make sure that new title documents are prepared to indicate transfer of assets from one spouse to the other. For example, new deeds transferring ownership of real estate must be recorded at the county recorder's office. New registration forms changing title to a motor vehicle (car, boat, motor home, and the like) must be sent to the state department of motor vehicles; failure to do so could result in you being sued or found liable if the vehicle is later involved in a mishap or receives a citation. Also, check investment accounts to see that ownership of stocks, bonds, and mutual funds is properly listed.

### **A Rose by Any Other Name . . .**

You may feel by now that you've gone through enough changes in your divorce. But there is one item which you may not mind changing: your name. Changing your name as part of the divorce process can be more efficient—and less expensive—than waiting to do it later, when you will probably have to pay court fees. Because you are changing the owner's name and address on many documents that are part of your divorce settlement, you may as well insert your new name while you're at it. You can use your birth name, use a name from a prior marriage, or, in some cases, simply make up a new name altogether. If you're in California, you can consult [\*How to Change Your Name in California\*](#), by Lisa Sedano and Emily Duskow (Nolo).

If your name changes as a result of divorce, be sure to contact the Social Security Administration by filing Form SS-5 at a local office or downloading the form from the agency's website, [www.ssa.gov](http://www.ssa.gov). It usually takes two weeks to have the change verified. A mismatch between a name on a tax return and a Social Security number could increase a tax bill or reduce the size of any refund.

\_\_\_\_\_ *Wills and other estate planning documents*

While you were married, you may have drafted a will, created a trust, or taken other steps to determine who will receive your property after you die. These documents must be reviewed and changed to reflect your new status.

\_\_\_\_\_ *Insurance*

Review your health, dental, and disability insurance policies. Be certain you (and your children) have adequate coverage. Also check to make sure that the beneficiaries of your life insurance policies are who you want them to be.

\_\_\_\_\_ *Debts*

Verify that all joint accounts are closed and that you pay all debts you agreed to cover. At the same time, contact the creditors your ex-spouse agreed to pay to make sure they are receiving payments. If they aren't, you can minimize damage to your own credit by paying the bills. You'll then have to take steps to get reimbursed from your ex-spouse.

\_\_\_\_\_ *Deposit accounts*

Check your deposit accounts—checking, savings, money markets, certificates of deposit, and treasury bills. The names on the accounts should be consistent with the decisions reached in your settlement.

### **Changing Joint Deposit Accounts**

To change joint deposit accounts, write to the financial institution where you have your account. Here's some sample language to use:

"Please be advised that as of \_\_\_\_\_ [date], account number \_\_\_\_\_, in the names of \_\_\_\_\_, is to be closed. All assets from that account are to be transferred into a new account in the name of \_\_\_\_\_."

You and your ex-spouse must sign this form. Some banks and brokerage firms may ask for a copy of your divorce decree, but do not send it unless you're specifically requested to do so.

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*Children*

Make sure you understand your custody and child support agreements. If you share legal custody of your children, you should have access to their school reports, medical records, and other information.

### Tips for Completing the Business of Divorce

Here are a few tips for wrapping up the loose ends:

- **Review settlement details.** A few days after your divorce is final—after you’ve recovered from the euphoria or the exhaustion—meet with your lawyer or financial advisers to go over the details of your settlement. Make lists of the items that you, your attorney, your ex-spouse, or others are responsible for completing. Don’t leave these items to memory.
- **Keep records of all payments you make or receive—for alimony, child support, or property exchange.** Make copies of all checks you send or receive. Also, use a calendar or log book to show payment amounts and the date payments are made or received. You need to record these details in case you ever go to court to raise or lower support payments or to collect unpaid support.
- **Make a copy of your final judgment and the settlement agreement.** Put the original in a safe place, such as a safe-deposit box.
- **Start a post-divorce file for essential papers.** Keep your payment records and the duplicate of your final judgment and the settlement agreement in the file. If you experience problems, or need to refer to divorce papers for investment or tax purposes, everything will be located in an easy-to-find spot. On an emotional level, hunting for divorce documents can be frustrating. Avoid triggering old angers and reduce stress by keeping these documents within easy reach.

## Can I—Or My Ex-Spouse—Change the Settlement?

Your settlement agreement contains several clauses. The main ones probably deal with property division, debt allocation, alimony, child support, and custody. You may be wondering whether you can change any of those provisions, or whether your spouse might try the same. The two of you can *voluntarily* change the terms of your agreement. But if your ex-spouse won't cooperate with a change you want, you will have to go to court. Ask your attorney for the specific rulings in your state and what's likely in your case, but below are some general guides.

**Property division.** It's highly unusual for a court to approve a request by one ex-spouse to change the terms of the property division after the divorce. Such a request might be approved if the ex-spouse who is asking to change the settlement agreement can show that the other ex-spouse hid assets—such as accounts receivable that should have been used to value a business. The ex-spouse will have to file a motion, schedule a court hearing, and then provide convincing evidence at the hearing of the other party's wrongdoing.

**Debt allocation.** If your ex-spouse doesn't pay debts according to your agreement, you will no doubt need the court's assistance. You can file a motion and ask the court to order your ex to pay—and to ensure that you're paid, ask the court to have your ex turn money over to the court. To avoid damaging your own credit, however, you should go ahead and pay the bills if you can, and ask the court for an order requiring reimbursement from your ex. The court can order the reimbursement by changing any equalization payment or property distribution that hasn't yet taken place. The court might also order a wage garnishment from your ex's paycheck, or require that other funds belonging to your ex be turned over to you.

**Alimony.** If you knowingly gave up alimony, you usually cannot go back to court and try to get some. Once it's waived, it's gone forever. If you are receiving or paying alimony, pay careful attention to the termination date. If you are the recipient and need money beyond that date, you can usually go back to court and ask for an extension of the alimony, *but you usually must make your request before the scheduled termination date.*

If you are the payer and you can't afford to pay the amount you've been ordered to pay in the settlement agreement, you must file a motion for modification with the court. See Chapter 18.

**Child support.** Child support is always subject to modification by a court because the court retains power over child support until the children reach age 18 or 21 (in some states), or until whatever age your agreement specifies support must be paid. If you are the payer and can't afford the payments, or if you are the recipient and you can't live on the current payment, you must file papers with the court, schedule a hearing, and show the judge that you cannot afford to pay—or to live on—the current support. See Chapter 18.

**Custody or visitation.** Like child support, custody and visitation are always subject to the court's modification. The parent wanting to change custody or visitation must file papers with the court, schedule a hearing, and show the judge a significant “change of circumstance” since the original order. Changing custody is usually a difficult and emotionally draining process. The court uses the standard of the “best interests of the child” and does not like to change the status quo. Unless you can show that the current custody arrangement is detrimental to your children—for example, their grades are suffering or they are depressed—you are not likely to win your court hearing.

### Get It in Writing

When you want to change an existing court order affecting alimony, child support, custody, or visitation, you can ask your ex-spouse to agree to the changes informally before filing papers and scheduling a court hearing. If your ex-spouse agrees on a modification, put it in writing and take it to the court for approval. The court will routinely approve it, as long as child support appears adequate. You may think that if you agree informally, getting court approval is not necessary. If relations later sour, however, not having court approval may cause great difficulty in enforcing the modified agreement.

## **What Do I Want to Do With My Life?**

When your divorce is over, it's more crucial than ever to reassess where you're going financially. Rarely does anyone's postdivorce life resemble pre-divorce expectations. You need to adapt to changes you didn't expect.

If you have used goal-setting tools throughout your divorce, you may simply need to make minor adjustments to your basic plans. If, however, your financial position after divorce is drastically different from what you had anticipated, you may need to reevaluate your objectives, scale down your spending, or take a crash course on investing wisely. Whatever your situation, don't jump into risky ventures with your share of the settlement.

## **If You Have Money to Invest**

Unless you're already a successful investor, it's best to put your money in a safe parking place until you get established—personally and professionally—in your new life. It's ideal to have three to six months' worth of cost-of-living expenses in a money market fund or a certificate of deposit (CD) as an emergency fund before you do any investing.

When you feel you have your postdivorce life under control and your future plans are relatively clear, you can move some of your assets into investments where your money can work harder for you—that is, earn more return than from a money market or CD.

You may start slowly with “dollar cost averaging.” With this method, you put the same amount of money into an investment on a regular basis over a long period of time. For example, you might put \$200 a month into a mutual fund. Your money will buy more shares when the market is down and fewer shares when the market is high. Over time, your average cost per share will be less than your average price per share, and you'll come out ahead.

## **If Money Is Tight**

No matter how well you've planned, you may find yourself with limited resources following your divorce. Cutting costs, then, will be your major priority. Some recently divorced people find it easier to make ends meet by pooling resources. You may be able to connect with others in similar circumstances by contacting singles clubs, Parents Without Partners, or

groups sponsored by religious or community organizations. Setting up a baby-sitting exchange or bartering for other services with members of the group can help everyone lower expenses.

Also consider buying groceries in bulk or purchasing necessities from consumer cooperatives or warehouse distributors. To lower your housing costs, you might rent out a room or part of your home.

Avoid taking cash advances or running up the balance on credit cards if you can help it. Most credit cards carry high interest charges—and that interest is not tax deductible.

You can also try to raise cash.

### **Borrow From Family or Friends**

Do not feel discouraged if you have to borrow money from family or friends. Many people find they need short-term loans to get them through this transition period. In times of financial crises, some people are lucky enough to have friends or relatives who can and will help out. Be sure to give them a promissory note for the loan specifying the amount, interest rate, and payment schedule.

### **Sell a Major Asset or Many Minor Items**

One of the best ways you can raise cash and keep associated costs to a minimum is to sell a major asset—or hold a garage or yard sale. Few people realize how much money may be lying around their house. Selling a hardly used car you were saving until your oldest child turns 16 or a computer system you no longer use could help you through a rough period.



Find the forms you need. For promissory notes, bills of sale, and even child care agreements, look to *101 Law Forms for Personal Use*, by Ralph Warner and Robin Leonard (Nolo).

### **Cash in a Tax-Deferred Account**

If you have an IRA or other tax-deferred account into which you've deposited money, consider cashing it in. You could have to pay the IRS a penalty—10% of the money you withdraw unless you qualify for the exceptions to this penalty. (See Chapter 14.) In addition, you'll owe income



taxes on the money you take out. But paying these penalties to the IRS may be better than struggling to get by.

## **Get a Home Equity Loan**

Many banks, savings and loans, credit unions, and other lenders offer home equity loans, also called second mortgages. Lenders usually lend between 50% and 80% of the market value of a house, less what is still owed on it. Home equity loans have advantages and disadvantages. Be sure you understand all the terms before you sign up for one.

### **Advantages**

- You can obtain a closed-end loan—you borrow a fixed amount of money and repay it in equal monthly installments for a set period. Or you can obtain a line of credit—you borrow as you need the money, drawing against the amount granted when you opened the account, and repay according to your agreement.
- The interest you pay is fully deductible on your income tax return.
- Federal law requires that interest rates on adjustable rate home equity loans be capped—meaning that the rate can increase only a set amount each year as well as over the life of the loan.

### **Disadvantages**

- You are obligating yourself to make another monthly or periodic payment. If you are unable to pay, you may have to sell your house or, even worse, face the possibility of the lender foreclosing. Before you take out a home equity loan, be sure you can make the monthly payment.
- While interest is deductible and capped for adjustable rate loans, it can still be high.
- You may have to pay an assortment of up-front fees for such costs as an appraisal, credit report, title insurance, and points, that can run to \$1,000 or more. In addition, many lenders charge a yearly fee of \$25 to \$50.

### Canceling a Home Equity Loan

If you have second thoughts after taking out a home equity loan, keep in mind that under the Federal Trade Commission's three-day cooling-off rule, you have the right to cancel a home equity loan or second mortgage until midnight of the third business day after you sign the contract. You must be given notice of your right to cancel and a cancellation form when you sign the contract.

### Get Your Tax Refund Fast

Sometimes, getting a tax refund quickly will help you through a cash-flow crisis, especially if the IRS owes you a lot. Each IRS district office has a Taxpayer Advocate's Office (TAO); the offices can help callers get their refunds early. Local offices are listed in the government listing of the phone book. New electronic filing procedures can also help the refund process go much faster, so take advantage of that if you can.

### Post-Divorce Financial Planning Tips

Financial planning strategies are often based on the idyllic picture of a couple who moves from struggling to make ends meet in their 20s to a happy retirement in their 60s. This picture hardly resembles the norm for divorced people, who must redesign their plans. Below are a few tips to help you do that.

### Update Your Net Worth and Cash Flow Statements

Your net worth and cash flow have changed because of the property you received or exchanged during the divorce and payments you now make or receive that you didn't before. You can't realize your financial goals in the future unless you know where you're starting from. Update the *Net Worth Statement* and *Cash Flow Statement* you completed in Chapter 12 to reflect your new status.

## Set Up a Debt Payment Plan

Pay off all debts you agreed to cover as part of your divorce settlement as quickly as possible. Create a payment schedule to match your pay periods. If you're paid on the first and 15th of the month, pay your bills then. Keep all bills in a folder. On the first of the month, take out only those bills that you will pay; write your checks, mail the bills, and put the folder away until the 15th. Then do the same on the 15th. By using this system, you won't constantly think about your debts.



For more detailed help in repaying your debts, we recommend [\*Solve Your Money Troubles: Get Debt Collectors off Your Back & Regain Financial Freedom\*](#), by Robin Leonard (Nolo).

## Make Sure You Have an Emergency Fund and an Emergency Plan

As we've recommended, you should have an "emergency fund" representing three to six months' worth of cost-of-living expenses. Make sure you can get to this money when you need it.

You may also want to make a contingency plan that takes into account your nonfinancial resources. Could you move in with friends or relatives—including your adult children—if you had to? Knowing you have some kind of cushion of support makes it easier to face life. Once you've been divorced, you may find yourself dwelling on the "worst case" you can imagine. Having a contingency plan can dispel fears and let you move on.

## Reevaluate Your Insurance

Most people fall into one of two extremes—either they have too little insurance or they have too much of the wrong kind. Now that your divorce is over, honestly reevaluate your insurance coverage. Read consumer publications and check with several agents to get a good overall update on your insurance position. Consider what your new needs are with respect to health, life, disability, auto, homeowner's or renter's, and personal liability coverage. If you are receiving alimony or child support, be sure to consider getting life insurance on your ex-spouse.

## **Keep Up With Changes in Your Tax Status**

When your marital status changes, so does your tax status. Not only might you be in a different tax bracket, but tax laws themselves may change. If you're in a higher tax bracket, you need investments that provide tax-deferred or tax-free income. More likely, however, you are in a lower tax bracket and will want to take advantage of two of the best tax planning opportunities most people have: owning a house and contributing to an IRA or a 401(k) through your work.

## **Reevaluate Your Retirement Program**

How much will it cost you to maintain your current lifestyle once you retire? If you and your ex-spouse divided retirement plans during divorce, be sure to do the follow-up work to secure any payments you are supposed to receive. If you have no retirement plan, go to a brokerage house and ask for a retirement projection. Do not let yourself be pushed into any investment you are not ready to make. Once you have an accurate calculation of post-retirement living costs, investigate several types of plans before choosing one that is right for you.

## **Take Care of Your Estate**

Many people mistakenly assume that they do not have enough property to plan their estate. If you do not plan, however, the state will do it for you after you die. You may only need a simple will, or you might want to investigate a living trust. Consider taking these steps:

- Name a guardian for your child(ren) or be sure the guardian you did name is still appropriate. Consider parenting style, financial resources, and moral and religious views.
- Talk with potential guardians before naming them in your will. They may be honored but reluctant to accept the responsibility. Designate an alternate as well in the event the guardian you select can't serve.
- Update your will and/or trust as needed. Changes in your life, such as another child, an increase or a loss in property, remarriage, or a move to another state may necessitate changing your estate planning documents.



Nolo publishes a number of books and software programs that can help you take care of your estate. They are described in Chapter 10.

## **Setting Goals After Divorce**

Right now is the perfect time to look at your financial goals for the short and long term. Use the chart titled *Setting Goals*, below, to open up ideas about where you'd like to go in the future.

## **If You Find a New Love, Protect Your Old Assets ... and Your Alimony**

For some people, going through a divorce leads them to swear off the institution of marriage altogether. For others, however, a divorce represents the freedom to be with the person they truly love. If you fall into that category, be sure that you don't let Cupid distract you from the financial realities that you will face. Read the next two sections if you are considering living with or marrying someone new.

## **Cohabitation Can Be Costly**

Once the divorce is over, you may be thinking about moving in with your new "significant other." Cohabitation, or living together without legally marrying, has risks and it's important that you understand them. Obviously, you will have to deal with the emotional side of your own and possibly your children's reactions to such a move. But you must recognize that you are taking legal and financial risks as well.

Here are a couple of cautionary tales that will illustrate why it is important to be financially aware when you live with someone.

We know of a couple who cohabited for four years in Minnesota. During that time, the man used his money to purchase the home in which they lived. The title to the home was taken in "joint tenancy," which means that if one owner died before the other, the survivor automatically inherited the deceased's share of the property, even if a will or trust said something

else. (See Chapter 6.) When the couple split up, the woman sued for half the home. The man showed that he used his money to buy it. The woman claimed that he gave her a gift of half the house. The court ruled against her, stating that the house was his unless a written contract stated otherwise.

In a California case, a woman met and moved in with a new man while she was divorcing her first husband. She and her new companion bought a condominium together using joint funds. To avoid complications while negotiating her divorce property settlement, she and her companion put the title to the condominium in his name only. After her divorce was final, the woman married her companion and they moved into a larger home, renting out the condominium—for which title remained in her second husband's name alone. Twenty-seven years later, they were divorcing. The judge ruled that the condo was the property of the second husband, because title was in his name only and she could not prove any ownership interest.

The moral of these stories is, if you and your new love acquire any assets together, be sure the title document (deed or registration) properly reflects your intentions.

In addition to getting proper titles on property, remember, too, that one companion could sue the other for a share of the assets or for alimony-like support. Given these legal and financial realities, it is in your interest to ask a lawyer's advice regarding cohabitation laws in your state before moving in with someone. We also suggest that you draft an agreement that details your understanding of your respective ownership in the property. You can incorporate this understanding into a prenuptial agreement if you later marry.



In many states, you can lose your alimony if you move in with someone new. Several states presume that someone who cohabits with a person of the opposite sex has less need for alimony. (One or two courts have applied the “spirit” of the law to cut off alimony to a woman who entered a lesbian relationship, but others have refused to do that, and in virtually all other cases, alimony terminated after heterosexual cohabitation.)



If you will move in with your new partner, we recommend that you get a copy of either *Living Together: A Legal Guide for Unmarried Couples*, by Ralph Warner, Toni Ihara, and Frederick Hertz (Nolo), or *A Legal Guide for Lesbian & Gay Couples*, by Hayden Curry, Denis Clifford, and Frederick Hertz (Nolo). Both books cover the financial, legal, parenting, estate planning, and practical concerns of couples whose living arrangements are not covered by state marital laws.

## Prenuptial Agreements

Many couples marrying for the second time (or more) consider a prenuptial agreement before taking the plunge. Prenuptial contracts can be valuable planning tools if one spouse has sizable wealth and wants to preserve it for children from a prior marriage. While such agreements have a reputation of being unromantic, they can actually prevent a great deal of heartache.

Prenuptial agreements are used to protect the control, management, and ownership of a family business from the prospective spouse, or to state the separate or marital nature of certain assets brought into the marriage or to be acquired in the future. Couples can also use prenuptial agreements to ensure that the laws of the state where they were married will govern in the event of a divorce, no matter where they live in the future.

If a couple gets a divorce but does not have a prenuptial agreement, assuming they can't otherwise agree, their assets will be divided in accordance with state laws. This means that in community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin), marital property will be divided equally; in equitable distribution states (the rest), property will be split "fairly" according to the dictates of the court. If your new spouse contributed to the appreciation of assets that belonged to you alone prior to the marriage, those assets could ultimately be considered marital property subject to division at divorce.

In some cases, prenuptial agreements are challenged by unhappy spouses and struck down in court. This can happen if the terms are too favorable to one spouse or if the agreement was signed under what the court considers unfair circumstances. If you are considering a prenuptial agreement, it is more likely to stand up if it meets these conditions:

- The terms are fair.
- It is in writing (some states require acknowledgment and attorney certification as well).
- There is a clause stating that if any provision of the agreement is invalidated, the rest of the agreement still remains in effect.
- There is a listing attached showing each spouse's assets and liabilities.
- Each spouse has had the agreement reviewed by his or her separate lawyer.
- It includes a clause stating that all agreements between the prospective spouses are included in the prenuptial agreement.

In addition to a prenuptial agreement, you can protect your separate property through more sophisticated legal tools including an irrevocable trust, revocable living trust, or family limited partnership. For more information on these and other estate planning tools, see one of the many Nolo estate planning publications listed in Chapter 10.



If you are considering remarrying and want to prepare a prenuptial agreement, check out *Prenuptial Agreements: How to Write a Fair & Lasting Contract*, by Katherine F. Stoner and Shae Irving (Nolo).

## How Can I Move Beyond the Divorce?

By the time your divorce ends, you may not be sure who won or who lost. You need to give yourself time to reassess what has happened in your life. You may be so tired of the divorce process that you don't want to hear another word about money. Worse, you may feel bitter or gun-shy about moving forward. As we've said throughout this book, you must manage your money and your emotions well if you are to end the relationship with your spouse successfully.

Once you've followed up on the legal and financial details of your settlement, check your emotional state to determine what unresolved feelings you are carrying with you as you move into singlehood. If things are not what you anticipated, don't spend time and money in a continuing connection with your ex-spouse. Recognize your gains and cut your losses so you can get on with your new life.



These questions are designed to help you sort through the emotional and economic fallout of ending a marriage. Figuring out your answers can help you move on.

*What changes in my financial life did I not anticipate before the final settlement?*

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*What will be different in my children's lives now that the divorce is over?*

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*What regrets do I still have about the divorce?*

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*What financial steps do I feel good about, and what could I have done differently?*

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*How can I continue to expand the positive steps I've taken?*

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*What can I do to avoid repeating the financial mistakes I made?*

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We wish you the best of luck and a speedy recovery from the process of divorce.

### Setting Goals

*Instructions: Use this matrix to write your short- and long-term goals. Begin now to focus on the future—**your** future—and the memories of the past will begin to fade.*

#### My professional goals are:

next six months:

next one year:

next five years:

#### My educational goals are:

next six months:

next one year:

next five years:

#### My recreation-travel-entertainment goals are:

next six months:

next one year:

next five years:

| Setting Goals (cont'd)        |                |                  |
|-------------------------------|----------------|------------------|
| My plans for my children are: |                |                  |
| next six months:              | next one year: | next five years: |
|                               |                |                  |
| My retirement goals are:      |                |                  |
| next six months:              | next one year: | next five years: |
|                               |                |                  |
| My other goals are:           |                |                  |
| next six months:              | next one year: | next five years: |
|                               |                |                  |



# Appendix

## Resources Beyond the Book

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|                                                     |     |
|-----------------------------------------------------|-----|
| A. Law Libraries.....                               | 441 |
| Finding a Law Library .....                         | 441 |
| Finding a State Law That Affects Your Divorce ..... | 441 |
| Going Beyond State Laws .....                       | 442 |
| Using Background Resources .....                    | 442 |
| B. Lawyers and Typing Services .....                | 443 |
| Finding a Lawyer .....                              | 443 |
| What to Look for in a Lawyer .....                  | 444 |
| C. Online Legal Resources.....                      | 445 |
| D. Additional Resources .....                       | 446 |
| Attorneys, Mediators, and Therapists.....           | 446 |
| Child Support .....                                 | 447 |
| Custody .....                                       | 447 |
| Domestic Violence .....                             | 448 |
| Employment .....                                    | 448 |
| Appraisers .....                                    | 448 |
| Tax Assistance .....                                | 449 |
| Miscellaneous Financial Assistance .....            | 449 |

|                                        |     |
|----------------------------------------|-----|
| E. Present Value Factors.....          | 450 |
| F. Future Value Factors .....          | 456 |
| G. List of Professional Advisers ..... | 462 |

*This book helps you through the divorce process by giving you strategies for evaluating your assets and debts, your likelihood of paying or receiving alimony or child support, and your children's custody. But you may need help beyond this book. The three best sources of legal help are a law library, lawyer, or typing service.*

**B**efore discussing additional resources in detail, here's a general piece of advice: Make all decisions yourself. By reading this book, you've taken on the responsibility for getting information necessary to make informed decisions about your legal and financial affairs. If you decide to get help from others, apply this same self-empowerment principle—shop around until you find an adviser who values your competence and intelligence and recognizes your right to make your own decisions.

## **A. Law Libraries**

Often, you can handle a legal problem yourself if you're willing to do some research in a law library. Here, briefly, are the basic steps to researching a legal question. For more detailed, but user-friendly, instructions on legal research, see *Legal Research: How to Find & Understand the Law*, by Stephen Elias and Susan Levinkind (Nolo).

### **Finding a Law Library**

To do legal research, you need to find a law library that's open to the public. Public law libraries are often housed in county courthouses, public law schools, and state capitals. If you can't find one, ask a public library reference librarian, court clerk, or lawyer.

### **Finding a State Law That Affects Your Divorce**

Laws passed by state legislatures are occasionally referred to in this book. To find a state law, or statute, you need to look in a multivolume set of books called the state code. State codes are divided into titles. Most states divide their titles by number; a few states divide them by subject, such as the civil code, family code, or finance code.

To read a law, find the state codes in your law library, locate the title you need, turn to the section number, and read. If you already have a proper reference to the law—called the citation—finding the law is straightforward. If you don't have a citation, you can find the law by referring to the index in the code you're using.

After you read the law in the hardcover book, turn to the back of the book. There should be an insert pamphlet (called a pocket part) for the current or previous year. Look for the statute in the pocket part to see if it has been amended since the hardcover volume was published.

## Going Beyond State Laws

If you want to find the answer to a legal question, rather than simply look up a law, you will need some guidance in basic legal research techniques. Resources that may be available in your law library are:

- *Legal Research: How to Find & Understand the Law*, by Stephen Elias and Susan Levinkind (Nolo).
- *Legal Research in a Nutshell*, by Kent C. Olsen and Morris Cohen (West), and
- *Finding the Law: An Abridged Edition of How to Find the Law* (11th ed.), by Robert Berring (West).

## Using Background Resources

If you want to research a legal question related to family law but don't know where to begin, one of the best resources is the *Family Law Reporter*, published by the Bureau of National Affairs (BNA). This very thorough, four-volume publication covers all 50 states and the District of Columbia, and is updated weekly. It highlights and summarizes cases, new statutes, and family law news. It also includes a guide to tax laws affecting family law, a summary of each state's divorce laws, and a sample marital settlement agreement.

Most law libraries will have the *Family Law Reporter*. If you can't find it, however, you will need to look at materials written specifically for your state. Ask a law librarian for help.



## B. Lawyers and Typing Services

A lawyer can provide you with information, guidance, or legal representation. A typing service can act as a “legal secretary” if you need to have documents prepared and filed in court. Typing services *cannot* give legal advice, but they charge far less than lawyers for their services. Typing services are covered in Chapter 7.

### Finding a Lawyer

Before explaining how to find a lawyer, let’s first eliminate the types of lawyers you are not looking for:

- The expensive, flamboyant lawyer who grandstands for his or her client but fails to deliver promised services and passes your case on to a recent law school graduate who works in the office.
- The associate or partner at a giant law firm that represents big businesses. These lawyers charge high fees, and few know much about divorce cases or keeping costs down.
- The lawyer who won’t keep you informed about plans for your case and who wants to make all decisions without consulting you. These lawyers are annoyed—and intimidated—by clients who know anything about the law. What they want is a passive client who doesn’t ask a lot of questions and pays the bill on time each month.

What you do want is a dedicated, smart, and skilled lawyer who regularly handles family law and divorce cases. The lawyer should understand that your input must be sought for every decision. This being said, here are several ways to find a lawyer:

**Typing services.** The best referrals will probably come from an independent paralegal listed in the Yellow Pages under “paralegals” or “typing services.” Almost daily, independent paralegals refer their clients to lawyers and get feedback on the lawyers’ work.

**Personal referrals.** This is the most common approach. If you know someone who was pleased with the services of a lawyer, call that lawyer first. If that lawyer doesn’t handle divorces or can’t take your case, he or she may recommend someone else. Be careful, however, when selecting a lawyer from a personal referral. A lawyer’s satisfactory performance in one

situation does not guarantee that the person will perform the same way in your case.

**Group legal plans.** Some unions, employers, and consumer action organizations offer group plans to their members or employees, who can obtain comprehensive legal assistance free or for low rates.

**Prepaid legal insurance.** Prepaid legal insurance plans offer some services for a low monthly fee and charge more for additional work. Participating lawyers may use the plan as a way to get clients who are attracted by the low-cost basic services, and then sell them more expensive services. If the lawyer recommends an expensive course of action, get a second opinion before you agree.

But if a plan offers extensive free advice, your initial membership fee may be worth the consultation you receive. You can always join a plan for a specific service and then not renew.

There's no guarantee that the lawyers available through these plans are of the best caliber; sometimes they aren't. Check out the plan carefully before signing up. Ask about the plan's complaint system, whether you get to choose your lawyer, and whether or not the lawyer will represent you in court.

**Lawyer referral panels.** Most county bar associations will give out the names of attorneys who practice in your area. But bar associations often fail to provide meaningful screening for the attorneys listed, which means those who participate may not be the most experienced or competent.

**Lawyer directories.** There are lists of attorneys on most of the divorce websites. Nolo has a new lawyer directory at [www.nolo.com](http://www.nolo.com); check to see whether your area is covered.

## What to Look for in a Lawyer

No matter what approach you take to finding a lawyer, here are three suggestions on how to make sure you have the best possible working relationship with your attorney.

First, fight the urge you may have to surrender your will and be intimidated by a lawyer. You should be the one who decides what you feel comfortable doing about your legal and financial affairs. You're hiring the

lawyer to perform a service for you; shop around if the price or personality isn't right.

Second, you must be as comfortable as possible with any lawyer you hire. When making an appointment, ask to talk directly to the lawyer. If you can't, this may give you a hint as to how accessible he or she is.

If you do talk directly to the lawyer, ask some specific questions. Do you get clear, concise answers? If not, try someone else. If the lawyer says little except to suggest that he or she handle the problem—with a substantial fee—watch out. You're talking with someone who doesn't know the answer and won't admit it, or someone who pulls rank on the basis of professional standing. Don't be a passive client or hire a lawyer who wants you to be one. If the lawyer admits to not knowing an answer, that isn't necessarily bad. In most cases, the lawyer must do some research.

Also, pay attention to how the lawyer responds to the fact that you have considerable information. If you read this book, you know more about divorce and money than the average person. Does the lawyer seem comfortable with that? Does the lawyer give straightforward answers to your questions—or does the lawyer want to maintain an aura of mystery about the legal system? Pay attention to your own intuition. Many lawyers are threatened when the client knows too much—or, in some cases, anything.

Once you find a lawyer you like, make an hour-long appointment to discuss your situation fully. Your goal at the initial conference is to find out what the lawyer recommends and how much it will cost. Go home and think about the lawyer's suggestions. If they don't make complete sense or if you have other reservations, call someone else.

Finally, keep in mind that the lawyer works for you. Once you hire a lawyer, you have the absolute right to switch to another—or to fire the lawyer and handle the matter yourself—at any time, for any reason.

## **C. Online Legal Resources**

A growing number of basic legal resources are available online. Nolo's legal resources, at [www.nolo.com](http://www.nolo.com), include a vast amount of free legal information for consumers on a wide variety of legal topics.

In addition, a wide variety of secondary sources intended for both lawyers and the general public has been posted by law schools and firms. A good way to find these sources is to visit any of the following websites, each of which provides links to legal information by specific subject:

- [www.findlaw.com](http://www.findlaw.com). This legal search engine is an excellent resource for do-it-yourself legal research.
- [www.yahoo.com/law](http://www.yahoo.com/law). You can find links to many legal topics.
- [www.law.cornell.edu](http://www.law.cornell.edu). This site is maintained by Cornell Law School's Legal Information Institute. You can find the text of some state court decisions. You can also search for material by topic.
- [www.law.indiana.edu](http://www.law.indiana.edu). This site is maintained by Indiana University's School of Law at Bloomington. You can search by state governments and law journals, or by topic.

## **D. Additional Resources**

Below are names, addresses, and phone numbers of organizations that may be able to offer additional assistance.

### **Attorneys, Mediators, and Therapists**

American Academy of Matrimonial Lawyers  
150 No. Michigan Ave., Suite 2040  
Chicago, IL 60601  
312-263-6477 (phone)  
312-263-7682 (fax)  
[www.aaml.org](http://www.aaml.org)

Center for Dispute Settlement  
1666 Connecticut Ave., NW, Suite 500  
Washington, DC 20009  
202-265-9572 (phone)  
202-332-3951 (fax)  
[www.cdsusa.org](http://www.cdsusa.org)

American Association for Marriage and Family Therapy  
112 South Alfred St.  
Alexandria, VA 22314-3061  
703-838-9808 (phone)  
703-838-9805 (fax)  
[www.aamft.org](http://www.aamft.org)

Association for Conflict Resolution  
1015 18th St. NW, Suite 1150  
Washington, DC 20036  
202-464-9700 (phone)  
202-464-9720 (fax)  
[www.acrnet.org](http://www.acrnet.org)

## **Child Support**

National Child Support Enforcement Association  
444 No. Capitol St., Suite 414  
Washington, DC 20001-1512  
202-624-8180 (phone)  
202-624-8828 (fax)  
[www.ncsea.org](http://www.ncsea.org)

Administration for Children and Families  
U.S. Dept. of Health and Human Services  
Child Support Enforcement  
370 L'Enfant Promenade, SW  
Washington, DC 20201  
202-401-9383 (phone)  
202-401-5559 (fax)  
[www.acf\\_services.html#cse](http://www.acf_services.html#cse)

## **Custody**

Alliance for Noncustodial Parents Rights  
[www.ancpr.org](http://www.ancpr.org)

National Congress for Fathers and Children  
9454 W. Wilshire Blvd., Suite 907  
Beverly Hills, CA 90212  
310-247-6051 (phone)  
[www.ncfc.net/ncfc](http://www.ncfc.net/ncfc)

## **Domestic Violence**

Family Violence Prevention Fund  
383 Rhode Island St., Suite 304  
San Francisco, CA 94103  
415-252-8900 (phone)  
415-252-8991 (fax)  
[www.endabuse.org](http://www.endabuse.org)

## **Employment**

Women Work! (National Network for Women's Employment)  
1625 K St., NW, Suite 300  
Washington, DC 20006  
202-467-6346 (phone)  
202-467-5366 (fax)  
[www.womenwork.org](http://www.womenwork.org)

## **Appraisers**

American Society of Appraisers  
(business appraisers)  
555 Herndon Parkway, Suite 125  
Herndon, VA 20170  
703-478-2228 (phone)  
703-742-8471 (fax)  
[www.appraisers.org](http://www.appraisers.org)

Appraisal Institute  
(real estate appraisers)  
550 West Van Buren St., Suite 1000  
Chicago, IL 60607  
312-335-4100 (phone)  
312-335-4400 (fax)  
[www.appraisalinstitute.org](http://www.appraisalinstitute.org)

## **Tax Assistance**

Internal Revenue Service (IRS)

(to obtain tax forms)

800-829-1040 (phone)

[www.irs.gov](http://www.irs.gov)

National Association of Enrolled Agents

(for a referral to an Enrolled Agent)

1120 Connecticut Ave., NW, Suite 460

Washington, DC 20036

202-822-6232 (phone)

202-822-6270 (fax)

[www.naea.org](http://www.naea.org)

## **Miscellaneous Financial Assistance**

Financial Planning Association

(for a referral to a financial planner)

800-322-4237 (phone)

[www.fpanet.org](http://www.fpanet.org)

National Foundation for Credit Counseling

(to find a Consumer Credit Counseling office)

801 Roeder Rd., Suite 900

Silver Spring, MD 20910

[www.nfcc.org](http://www.nfcc.org)

Myvesta

(access to self-help consumer education resources)

[www.myvesta.org](http://www.myvesta.org)

Social Security Administration

(to confirm work and benefits history)

800-772-1213 (phone)

[www.ssa.gov](http://www.ssa.gov)

(to get information pertaining to Social Security and women)

[www.ssa.gov/women](http://www.ssa.gov/women)

Federal Trade Commission

202-326-2222 (phone)

[www.ftc.gov](http://www.ftc.gov)

(see “credit and divorce” section under “consumers” link)

## E. Present Value Factors

This chart shows the time value of money and can help you estimate the future value of benefits, such as retirement plans. The left-hand column represents years, while the percentages across the top are rates of inflation. For example, to find the value of a \$10,000-a-year payment 20 years from now with 4% inflation, follow the 20-year line to 4%. The Present Value Factor is .4564. Multiply that by \$10,000, and you get \$4,564, the purchasing power that \$10,000 will have in two decades at that rate of inflation.

| Present Value Factors |       |       |       |       |       |       |       |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|
| Year                  | 1%    | 2%    | 3%    | 4%    | 5%    | 6%    | 7%    |
| 1                     | .9901 | .9804 | .9709 | .9615 | .9524 | .9434 | .9346 |
| 2                     | .9803 | .9612 | .9426 | .9246 | .9070 | .8900 | .8734 |
| 3                     | .9706 | .9423 | .9151 | .8890 | .8638 | .8396 | .8163 |
| 4                     | .9610 | .9238 | .8885 | .8548 | .8227 | .7921 | .7629 |
| 5                     | .9515 | .9057 | .8626 | .8219 | .7835 | .7473 | .7130 |
| 6                     | .9420 | .8880 | .8375 | .7903 | .7462 | .7050 | .6663 |
| 7                     | .9327 | .8706 | .8131 | .7599 | .7107 | .6651 | .6227 |
| 8                     | .9235 | .8535 | .7894 | .7307 | .6768 | .6274 | .5820 |
| 9                     | .9143 | .8368 | .7664 | .7026 | .6446 | .5919 | .5439 |
| 10                    | .9053 | .8203 | .7441 | .6756 | .6139 | .5584 | .5083 |
| 11                    | .8963 | .8043 | .7224 | .6496 | .5847 | .5268 | .4751 |
| 12                    | .8874 | .7885 | .7014 | .6246 | .5568 | .4970 | .4440 |
| 13                    | .8787 | .7730 | .6810 | .6006 | .5303 | .4688 | .4150 |
| 14                    | .8700 | .7579 | .6611 | .5775 | .5051 | .4423 | .3878 |
| 15                    | .8613 | .7430 | .6419 | .5553 | .4810 | .4173 | .3624 |
| 16                    | .8528 | .7284 | .6232 | .5339 | .4581 | .3936 | .3387 |
| 17                    | .8444 | .7142 | .6050 | .5134 | .4363 | .3714 | .3166 |
| 18                    | .8360 | .7002 | .5874 | .4936 | .4155 | .3503 | .2959 |
| 19                    | .8277 | .6864 | .5703 | .4746 | .3957 | .3305 | .2765 |
| 20                    | .8195 | .6730 | .5537 | .4564 | .3769 | .3118 | .2584 |



| Present Value Factors |       |       |       |       |       |       |       |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|
| Year                  | 1%    | 2%    | 3%    | 4%    | 5%    | 6%    | 7%    |
| 21                    | .8114 | .6598 | .5375 | .4388 | .3589 | .2942 | .2415 |
| 22                    | .8034 | .6468 | .5219 | .4220 | .3418 | .2775 | .2257 |
| 23                    | .7954 | .6342 | .5067 | .4057 | .3256 | .2618 | .2109 |
| 24                    | .7876 | .6217 | .4919 | .3901 | .3101 | .2470 | .1971 |
| 25                    | .7798 | .6095 | .4776 | .3751 | .2953 | .2330 | .1842 |
| 26                    | .7720 | .5976 | .4637 | .3607 | .2812 | .2198 | .1722 |
| 27                    | .7644 | .5859 | .4502 | .3468 | .2678 | .2074 | .1609 |
| 28                    | .7568 | .5744 | .4371 | .3335 | .2551 | .1956 | .1504 |
| 29                    | .7493 | .5631 | .4243 | .3207 | .2429 | .1846 | .1406 |
| 30                    | .7419 | .5521 | .4120 | .3083 | .2314 | .1741 | .1314 |
| 31                    | .7346 | .5412 | .4000 | .2965 | .2204 | .1643 | .1228 |
| 32                    | .7273 | .5306 | .3883 | .2851 | .2099 | .1550 | .1147 |
| 33                    | .7201 | .5202 | .3770 | .2741 | .1999 | .1462 | .1072 |
| 34                    | .7130 | .5100 | .3660 | .2636 | .1904 | .1379 | .1002 |
| 35                    | .7059 | .5000 | .3554 | .2534 | .1813 | .1301 | .0937 |
| 36                    | .6989 | .4902 | .3450 | .2437 | .1727 | .1227 | .0875 |
| 37                    | .6920 | .4806 | .3350 | .2343 | .1644 | .1158 | .0818 |
| 38                    | .6852 | .4712 | .3252 | .2253 | .1566 | .1092 | .0765 |
| 39                    | .6784 | .4619 | .3158 | .2166 | .1491 | .1031 | .0715 |
| 40                    | .6717 | .4529 | .3066 | .2083 | .1420 | .0972 | .0668 |
| 41                    | .6650 | .4440 | .2976 | .2003 | .1353 | .0917 | .0624 |
| 42                    | .6584 | .4353 | .2890 | .1926 | .1288 | .0865 | .0583 |
| 43                    | .6519 | .4268 | .2805 | .1852 | .1227 | .0816 | .0545 |
| 44                    | .6454 | .4184 | .2724 | .1780 | .1169 | .0770 | .0509 |
| 45                    | .6391 | .4102 | .2644 | .1712 | .1113 | .0727 | .0476 |
| 46                    | .6327 | .4022 | .2567 | .1646 | .1060 | .0685 | .0445 |
| 47                    | .6265 | .3943 | .2493 | .1583 | .1009 | .0647 | .0416 |
| 48                    | .6203 | .3865 | .2420 | .1522 | .0961 | .0610 | .0389 |
| 49                    | .6141 | .3790 | .2350 | .1463 | .0916 | .0575 | .0363 |
| 50                    | .6080 | .3715 | .2281 | .1407 | .0872 | .0543 | .0339 |

| Present Value Factors |       |        |        |        |        |        |        |
|-----------------------|-------|--------|--------|--------|--------|--------|--------|
| Year                  | 8%    | 9%     | 10%    | 11%    | 12%    | 13%    | 14%    |
| 1                     | .9259 | 0.9174 | 0.9091 | 0.9009 | 0.8929 | 0.8850 | 0.8772 |
| 2                     | .8573 | 0.8417 | 0.8264 | 0.8116 | 0.7972 | 0.7831 | 0.7695 |
| 3                     | .7938 | 0.7722 | 0.7513 | 0.7312 | 0.7118 | 0.6931 | 0.6750 |
| 4                     | .7350 | 0.7084 | 0.6830 | 0.6587 | 0.6355 | 0.6133 | 0.5921 |
| 5                     | .6806 | 0.6499 | 0.6209 | 0.5935 | 0.5674 | 0.5428 | 0.5194 |
| 6                     | .6302 | 0.5963 | 0.5645 | 0.5346 | 0.5066 | 0.4803 | 0.4556 |
| 7                     | .5835 | 0.5470 | 0.5132 | 0.4817 | 0.4523 | 0.4251 | 0.3996 |
| 8                     | .5403 | 0.5019 | 0.4665 | 0.4339 | 0.4039 | 0.3762 | 0.3506 |
| 9                     | .5002 | 0.4604 | 0.4241 | 0.3909 | 0.3606 | 0.3329 | 0.3075 |
| 10                    | .4632 | 0.4224 | 0.3855 | 0.3522 | 0.3220 | 0.2946 | 0.2697 |
| 11                    | .4289 | 0.3875 | 0.3505 | 0.3173 | 0.2875 | 0.2607 | 0.2366 |
| 12                    | .3971 | 0.3555 | 0.3186 | 0.2858 | 0.2567 | 0.2307 | 0.2076 |
| 13                    | .3677 | 0.3262 | 0.2897 | 0.2575 | 0.2292 | 0.2042 | 0.1821 |
| 14                    | .3405 | 0.2992 | 0.2633 | 0.2320 | 0.2046 | 0.1807 | 0.1597 |
| 15                    | .3152 | 0.2745 | 0.2394 | 0.2090 | 0.1827 | 0.1599 | 0.1401 |
| 16                    | .2919 | 0.2519 | 0.2176 | 0.1883 | 0.1631 | 0.1415 | 0.1229 |
| 17                    | .2703 | 0.2311 | 0.1978 | 0.1696 | 0.1456 | 0.1252 | 0.1078 |
| 18                    | .2502 | 0.2120 | 0.1799 | 0.1528 | 0.1300 | 0.1108 | 0.0946 |
| 19                    | .2317 | 0.1945 | 0.1635 | 0.1377 | 0.1161 | 0.0981 | 0.0829 |
| 20                    | .2145 | 0.1784 | 0.1486 | 0.1240 | 0.1037 | 0.0868 | 0.0728 |
| 21                    | .1987 | 0.1637 | 0.1351 | 0.1117 | 0.0926 | 0.0768 | 0.0638 |
| 22                    | .1839 | 0.1502 | 0.1228 | 0.1007 | 0.0826 | 0.0680 | 0.0560 |
| 23                    | .1703 | 0.1378 | 0.1117 | 0.0907 | 0.0738 | 0.0601 | 0.0491 |
| 24                    | .1577 | 0.1264 | 0.1015 | 0.0817 | 0.0659 | 0.0532 | 0.0431 |
| 25                    | .1460 | 0.1160 | 0.0923 | 0.0736 | 0.0588 | 0.0471 | 0.0378 |

| Present Value Factors |       |        |        |        |        |        |        |
|-----------------------|-------|--------|--------|--------|--------|--------|--------|
| Year                  | 8%    | 9%     | 10%    | 11%    | 12%    | 13%    | 14%    |
| 26                    | .1352 | 0.1064 | 0.0839 | 0.0663 | 0.0525 | 0.0417 | 0.0331 |
| 27                    | .1252 | 0.0976 | 0.0763 | 0.0597 | 0.0469 | 0.0369 | 0.0291 |
| 28                    | .1159 | 0.0895 | 0.0693 | 0.0538 | 0.0419 | 0.0326 | 0.0255 |
| 29                    | .1073 | 0.0822 | 0.0630 | 0.0485 | 0.0374 | 0.0289 | 0.0224 |
| 30                    | .0994 | 0.0754 | 0.0573 | 0.0437 | 0.0334 | 0.0256 | 0.0196 |
| 31                    | .0920 | 0.0691 | 0.0521 | 0.0394 | 0.0298 | 0.0226 | 0.0172 |
| 32                    | .0852 | 0.0634 | 0.0474 | 0.0355 | 0.0266 | 0.0200 | 0.0151 |
| 33                    | .0789 | 0.0582 | 0.0431 | 0.0319 | 0.0238 | 0.0177 | 0.0132 |
| 34                    | .0730 | 0.0534 | 0.0391 | 0.0288 | 0.0212 | 0.0157 | 0.0116 |
| 35                    | .0676 | 0.0490 | 0.0356 | 0.0259 | 0.0189 | 0.0139 | 0.0102 |
| 36                    | .0626 | 0.0449 | 0.0323 | 0.0234 | 0.0169 | 0.0123 | 0.0089 |
| 37                    | .0580 | 0.0412 | 0.0294 | 0.0210 | 0.0151 | 0.0109 | 0.0078 |
| 38                    | .0537 | 0.0378 | 0.0267 | 0.0190 | 0.0135 | 0.0096 | 0.0069 |
| 39                    | .0497 | 0.0347 | 0.0243 | 0.0171 | 0.0120 | 0.0085 | 0.0060 |
| 40                    | .0460 | 0.0318 | 0.0221 | 0.0154 | 0.0107 | 0.0075 | 0.0053 |
| 41                    | .0426 | 0.0292 | 0.0201 | 0.0139 | 0.0096 | 0.0067 | 0.0046 |
| 42                    | .0395 | 0.0268 | 0.0183 | 0.0125 | 0.0086 | 0.0059 | 0.0041 |
| 43                    | .0365 | 0.0246 | 0.0166 | 0.0112 | 0.0076 | 0.0052 | 0.0036 |
| 44                    | .0338 | 0.0226 | 0.0151 | 0.0101 | 0.0068 | 0.0046 | 0.0031 |
| 45                    | .0313 | 0.0207 | 0.0137 | 0.0091 | 0.0061 | 0.0041 | 0.0027 |
| 46                    | .0290 | 0.0190 | 0.0125 | 0.0082 | 0.0054 | 0.0036 | 0.0024 |
| 47                    | .0269 | 0.0174 | 0.0113 | 0.0074 | 0.0049 | 0.0032 | 0.0021 |
| 48                    | .0249 | 0.0160 | 0.0103 | 0.0067 | 0.0043 | 0.0028 | 0.0019 |
| 49                    | .0230 | 0.0147 | 0.0094 | 0.0060 | 0.0039 | 0.0025 | 0.0016 |
| 50                    | .0213 | 0.0134 | 0.0085 | 0.0054 | 0.0035 | 0.0022 | 0.0014 |

| Present Value Factors |        |        |        |        |        |        |
|-----------------------|--------|--------|--------|--------|--------|--------|
| Year                  | 15%    | 16%    | 17%    | 18%    | 19%    | 20%    |
| 1                     | 0.8696 | 0.8621 | 0.8547 | 0.8475 | 0.8403 | 0.8333 |
| 2                     | 0.7561 | 0.7432 | 0.7305 | 0.7182 | 0.7062 | 0.6944 |
| 3                     | 0.6575 | 0.6407 | 0.6244 | 0.6086 | 0.5934 | 0.5787 |
| 4                     | 0.5718 | 0.5523 | 0.5337 | 0.5158 | 0.4987 | 0.4823 |
| 5                     | 0.4972 | 0.4761 | 0.4561 | 0.4371 | 0.4190 | 0.4019 |
| 6                     | 0.4323 | 0.4104 | 0.3898 | 0.3704 | 0.3521 | 0.3349 |
| 7                     | 0.3759 | 0.3538 | 0.3332 | 0.3139 | 0.2959 | 0.2791 |
| 8                     | 0.3269 | 0.3050 | 0.2848 | 0.2660 | 0.2487 | 0.2326 |
| 9                     | 0.2843 | 0.2630 | 0.2434 | 0.2255 | 0.2090 | 0.1938 |
| 10                    | 0.2472 | 0.2267 | 0.2080 | 0.1911 | 0.1756 | 0.1615 |
| 11                    | 0.2149 | 0.1954 | 0.1778 | 0.1619 | 0.1476 | 0.1346 |
| 12                    | 0.1869 | 0.1685 | 0.1520 | 0.1372 | 0.1240 | 0.1122 |
| 13                    | 0.1625 | 0.1452 | 0.1299 | 0.1163 | 0.1042 | 0.0935 |
| 14                    | 0.1413 | 0.1252 | 0.1110 | 0.0985 | 0.0876 | 0.0779 |
| 15                    | 0.1229 | 0.1079 | 0.0949 | 0.0835 | 0.0736 | 0.0649 |
| 16                    | 0.1069 | 0.0930 | 0.0811 | 0.0708 | 0.0618 |        |
| 17                    | 0.0929 | 0.0802 | 0.0693 | 0.0600 | 0.0520 |        |
| 18                    | 0.0808 | 0.0691 | 0.0592 | 0.0508 | 0.0437 |        |
| 19                    | 0.0703 | 0.0596 | 0.0506 | 0.0431 | 0.0367 |        |
| 20                    | 0.0611 | 0.0514 | 0.0433 | 0.0365 | 0.0308 |        |
| 21                    | 0.0531 | 0.0443 | 0.0370 | 0.0309 | 0.0259 |        |
| 22                    | 0.0462 | 0.0382 | 0.0316 | 0.0262 | 0.0218 |        |
| 23                    | 0.0402 | 0.0329 | 0.0270 | 0.0222 | 0.0183 |        |
| 24                    | 0.0349 | 0.0284 | 0.0231 | 0.0188 | 0.0154 |        |
| 25                    | 0.0304 | 0.0245 | 0.0197 | 0.0160 | 0.0129 |        |

| Present Value Factors |        |        |        |        |        |     |  |
|-----------------------|--------|--------|--------|--------|--------|-----|--|
| Year                  | 15%    | 16%    | 17%    | 18%    | 19%    | 20% |  |
| 26                    | 0.0264 | 0.0211 | 0.0169 | 0.0135 | 0.0109 |     |  |
| 27                    | 0.0230 | 0.0182 | 0.0144 | 0.0115 | 0.0091 |     |  |
| 28                    | 0.0200 | 0.0157 | 0.0123 | 0.0097 | 0.0077 |     |  |
| 29                    | 0.0174 | 0.0135 | 0.0105 | 0.0082 | 0.0064 |     |  |
| 30                    | 0.0151 | 0.0116 | 0.0090 | 0.0070 | 0.0054 |     |  |
|                       |        |        |        |        |        |     |  |
| 31                    | 0.0131 | 0.0100 | 0.0077 | 0.0059 | 0.0046 |     |  |
| 32                    | 0.0114 | 0.0087 | 0.0066 | 0.0050 | 0.0038 |     |  |
| 33                    | 0.0099 | 0.0075 | 0.0056 | 0.0042 | 0.0032 |     |  |
| 34                    | 0.0086 | 0.0064 | 0.0048 | 0.0036 | 0.0027 |     |  |
| 35                    | 0.0075 | 0.0055 | 0.0041 | 0.0030 | 0.0023 |     |  |
|                       |        |        |        |        |        |     |  |
| 36                    | 0.0065 | 0.0048 | 0.0035 | 0.0026 | 0.0019 |     |  |
| 37                    | 0.0057 | 0.0041 | 0.0030 | 0.0022 | 0.0016 |     |  |
| 38                    | 0.0049 | 0.0036 | 0.0026 | 0.0019 | 0.0013 |     |  |
| 39                    | 0.0043 | 0.0031 | 0.0022 | 0.0016 | 0.0011 |     |  |
| 40                    | 0.0037 | 0.0026 | 0.0019 | 0.0013 | 0.0010 |     |  |
|                       |        |        |        |        |        |     |  |
| 41                    | 0.0032 | 0.0023 | 0.0016 | 0.0011 | 0.0008 |     |  |
| 42                    | 0.0028 | 0.0020 | 0.0014 | 0.0010 | 0.0007 |     |  |
| 43                    | 0.0025 | 0.0017 | 0.0012 | 0.0008 | 0.0006 |     |  |
| 44                    | 0.0021 | 0.0015 | 0.0010 | 0.0007 | 0.0005 |     |  |
| 45                    | 0.0019 | 0.0013 | 0.0009 | 0.0006 | 0.0004 |     |  |
|                       |        |        |        |        |        |     |  |
| 46                    | 0.0016 | 0.0011 | 0.0007 | 0.0005 | 0.0003 |     |  |
| 47                    | 0.0014 | 0.0009 | 0.0006 | 0.0004 | 0.0003 |     |  |
| 48                    | 0.0012 | 0.0008 | 0.0005 | 0.0004 | 0.0002 |     |  |
| 49                    | 0.0011 | 0.0007 | 0.0005 | 0.0003 | 0.0002 |     |  |
| 50                    | 0.0009 | 0.0006 | 0.0004 | 0.0003 | 0.0002 |     |  |

## F. Future Value Factors

This chart lets you calculate an estimate of the future value of an asset, such as a house. The figures in the first column represent the Holding Period, or number of years you would expect to retain the asset. The percentages across the top indicate the inflation rate. When you follow the two lines until they intersect, you have the Future Value Factor. For instance, if you have a \$200,000 house that you expect to hold for another seven years and if you assume a 4% inflation rate, the FVF is 1.3159. Multiply that by \$200,000, and you have an estimated future value of \$263,180 for your house in seven years.

| Future Value Factors |        |        |        |        |        |        |        |
|----------------------|--------|--------|--------|--------|--------|--------|--------|
| Year                 | 1%     | 2%     | 3%     | 4%     | 5%     | 6%     | 7%     |
| 1                    | 1.0100 | 1.0200 | 1.0300 | 1.0400 | 1.0500 | 1.0600 | 1.0700 |
| 2                    | 1.0201 | 1.0404 | 1.0609 | 1.0816 | 1.1025 | 1.1236 | 1.1449 |
| 3                    | 1.0303 | 1.0612 | 1.0927 | 1.1249 | 1.1576 | 1.1910 | 1.2250 |
| 4                    | 1.0406 | 1.0824 | 1.1255 | 1.1699 | 1.2155 | 1.2625 | 1.3108 |
| 5                    | 1.0510 | 1.1041 | 1.1593 | 1.2167 | 1.2763 | 1.3382 | 1.4026 |
| 6                    | 1.0615 | 1.1262 | 1.1941 | 1.2653 | 1.3401 | 1.4185 | 1.5007 |
| 7                    | 1.0721 | 1.1487 | 1.2299 | 1.3159 | 1.4071 | 1.5036 | 1.6058 |
| 8                    | 1.0829 | 1.1717 | 1.2668 | 1.3686 | 1.4775 | 1.5938 | 1.7182 |
| 9                    | 1.0937 | 1.1951 | 1.3048 | 1.4233 | 1.5513 | 1.6895 | 1.8385 |
| 10                   | 1.1046 | 1.2190 | 1.3439 | 1.4802 | 1.6289 | 1.7908 | 1.9672 |
| 11                   | 1.1157 | 1.2434 | 1.3842 | 1.5395 | 1.7103 | 1.8983 | 2.1049 |
| 12                   | 1.1268 | 1.2682 | 1.4258 | 1.6010 | 1.7959 | 2.0122 | 2.2522 |
| 13                   | 1.1381 | 1.2936 | 1.4685 | 1.6651 | 1.8856 | 2.1329 | 2.4098 |
| 14                   | 1.1495 | 1.3195 | 1.5126 | 1.7317 | 1.9799 | 2.2609 | 2.5785 |
| 15                   | 1.1610 | 1.3459 | 1.5580 | 1.8009 | 2.0789 | 2.3966 | 2.7590 |
| 16                   | 1.1726 | 1.3728 | 1.6047 | 1.8730 | 2.1829 | 2.5404 | 2.9522 |
| 17                   | 1.1843 | 1.4002 | 1.6528 | 1.9479 | 2.2920 | 2.6928 | 3.1588 |
| 18                   | 1.1961 | 1.4282 | 1.7024 | 2.0258 | 2.4066 | 2.8543 | 3.3799 |
| 19                   | 1.2081 | 1.4568 | 1.7535 | 2.1068 | 2.5270 | 3.0256 | 3.6165 |
| 20                   | 1.2202 | 1.4859 | 1.8061 | 2.1911 | 2.6533 | 3.2071 | 3.8697 |

| Future Value Factors |        |        |        |        |         |         |         |
|----------------------|--------|--------|--------|--------|---------|---------|---------|
| Year                 | 1%     | 2%     | 3%     | 4%     | 5%      | 6%      | 7%      |
| 21                   | 1.2324 | 1.5157 | 1.8603 | 2.2788 | 2.7860  | 3.3996  | 4.1406  |
| 22                   | 1.2447 | 1.5460 | 1.9161 | 2.3699 | 2.9253  | 3.6035  | 4.4304  |
| 23                   | 1.2572 | 1.5769 | 1.9736 | 2.4647 | 3.0715  | 3.8197  | 4.7405  |
| 24                   | 1.2697 | 1.6084 | 2.0328 | 2.5633 | 3.2251  | 4.0489  | 5.0724  |
| 25                   | 1.2824 | 1.6406 | 2.0938 | 2.6658 | 3.3864  | 4.2919  | 5.4274  |
| 26                   | 1.2953 | 1.6734 | 2.1566 | 2.7725 | 3.5557  | 4.5494  | 5.8074  |
| 27                   | 1.3082 | 1.7069 | 2.2213 | 2.8834 | 3.7335  | 4.8223  | 6.2139  |
| 28                   | 1.3213 | 1.7410 | 2.2879 | 2.9987 | 3.9201  | 5.1117  | 6.6488  |
| 29                   | 1.3345 | 1.7758 | 2.3566 | 3.1187 | 4.1161  | 5.4184  | 7.1143  |
| 30                   | 1.3478 | 1.8114 | 2.4273 | 3.2434 | 4.3219  | 5.7435  | 7.6123  |
| 31                   | 1.3613 | 1.8476 | 2.5001 | 3.3731 | 4.5380  | 6.0881  | 8.1451  |
| 32                   | 1.3749 | 1.8845 | 2.5751 | 3.5081 | 4.7649  | 6.4534  | 8.7153  |
| 33                   | 1.3887 | 1.9222 | 2.6523 | 3.6484 | 5.0032  | 6.8406  | 9.3253  |
| 34                   | 1.4026 | 1.9607 | 2.7319 | 3.7943 | 5.2533  | 7.2510  | 9.9781  |
| 35                   | 1.4166 | 1.9999 | 2.8139 | 3.9461 | 5.5160  | 7.6861  | 10.6766 |
| 36                   | 1.4308 | 2.0399 | 2.8983 | 4.1039 | 5.7918  | 8.1473  | 11.4239 |
| 37                   | 1.4451 | 2.0807 | 2.9852 | 4.2681 | 6.0814  | 8.6361  | 12.2236 |
| 38                   | 1.4595 | 2.1223 | 3.0748 | 4.4388 | 6.3855  | 9.1543  | 13.0793 |
| 39                   | 1.4741 | 2.1647 | 3.1670 | 4.6164 | 6.7048  | 9.7035  | 13.9948 |
| 40                   | 1.4889 | 2.2080 | 3.2620 | 4.8010 | 7.0400  | 10.2857 | 14.9745 |
| 41                   | 1.5038 | 2.2522 | 3.3599 | 4.9931 | 7.3920  | 10.9029 | 16.0227 |
| 42                   | 1.5188 | 2.2972 | 3.4607 | 5.1928 | 7.7616  | 11.5570 | 17.1443 |
| 43                   | 1.5340 | 2.3432 | 3.5645 | 5.4005 | 8.1497  | 12.2505 | 18.3444 |
| 44                   | 1.5493 | 2.3901 | 3.6715 | 5.6165 | 8.5572  | 12.9855 | 19.6285 |
| 45                   | 1.5648 | 2.4379 | 3.7816 | 5.8412 | 8.9850  | 13.7646 | 21.0025 |
| 46                   | 1.5805 | 2.4866 | 3.8950 | 6.0748 | 9.4343  | 14.5905 | 22.4726 |
| 47                   | 1.5963 | 2.5363 | 4.0119 | 6.3178 | 9.9060  | 15.4659 | 24.0457 |
| 48                   | 1.6122 | 2.5871 | 4.1323 | 6.5705 | 10.4013 | 16.3939 | 25.7289 |
| 49                   | 1.6283 | 2.6388 | 4.2562 | 6.8333 | 10.9213 | 17.3775 | 27.5299 |
| 50                   | 1.6446 | 2.6916 | 4.3839 | 7.1067 | 11.4674 | 18.4202 | 29.4570 |

| Future Value Factors |        |        |         |         |         |         |         |
|----------------------|--------|--------|---------|---------|---------|---------|---------|
| Year                 | 8%     | 9%     | 10%     | 11%     | 12%     | 13%     | 14%     |
| 1                    | 1.0800 | 1.0900 | 1.1000  | 1.1100  | 1.1200  | 1.1300  | 1.1400  |
| 2                    | 1.1664 | 1.1881 | 1.2100  | 1.2321  | 1.2544  | 1.2769  | 1.2996  |
| 3                    | 1.2597 | 1.2950 | 1.3310  | 1.3676  | 1.4049  | 1.4429  | 1.4815  |
| 4                    | 1.3605 | 1.4116 | 1.4641  | 1.5181  | 1.5735  | 1.6305  | 1.6890  |
| 5                    | 1.4693 | 1.5386 | 1.6105  | 1.6851  | 1.7623  | 1.8424  | 1.9254  |
| 6                    | 1.5869 | 1.6771 | 1.7716  | 1.8704  | 1.9738  | 2.0820  | 2.1950  |
| 7                    | 1.7138 | 1.8280 | 1.9487  | 2.0762  | 2.2107  | 2.3526  | 2.5023  |
| 8                    | 1.8509 | 1.9926 | 2.1436  | 2.3045  | 2.4760  | 2.6584  | 2.8526  |
| 9                    | 1.9990 | 2.1719 | 2.3579  | 2.5580  | 2.7731  | 3.0040  | 3.2519  |
| 10                   | 2.1589 | 2.3674 | 2.5937  | 2.8394  | 3.1058  | 3.3946  | 3.7072  |
| 11                   | 2.3316 | 2.5804 | 2.8531  | 3.1518  | 3.4785  | 3.8359  | 4.2262  |
| 12                   | 2.5182 | 2.8127 | 3.1384  | 3.4985  | 3.8960  | 4.3345  | 4.8179  |
| 13                   | 2.7196 | 3.0658 | 3.4523  | 3.8833  | 4.3635  | 4.8980  | 5.4924  |
| 14                   | 2.9372 | 3.3417 | 3.7975  | 4.3104  | 4.8871  | 5.5348  | 6.2613  |
| 15                   | 3.1722 | 3.6425 | 4.1772  | 4.7846  | 5.4736  | 6.2543  | 7.1379  |
| 16                   | 3.4259 | 3.9703 | 4.5950  | 5.3109  | 6.1304  | 7.0673  | 8.1372  |
| 17                   | 3.7000 | 4.3276 | 5.0545  | 5.8951  | 6.8660  | 7.9861  | 9.2765  |
| 18                   | 3.9960 | 4.7171 | 5.5599  | 6.5436  | 7.6900  | 9.0243  | 10.5752 |
| 19                   | 4.3157 | 5.1417 | 6.1159  | 7.2633  | 8.6128  | 10.1974 | 12.0557 |
| 20                   | 4.6610 | 5.6044 | 6.7275  | 8.0623  | 9.6463  | 11.5231 | 13.7435 |
| 21                   | 5.0338 | 6.1088 | 7.4002  | 8.9492  | 10.8038 | 13.0211 | 15.6676 |
| 22                   | 5.4365 | 6.6586 | 8.1403  | 9.9336  | 12.1003 | 14.7138 | 17.8610 |
| 23                   | 5.8715 | 7.2579 | 8.9543  | 11.0263 | 13.5523 | 16.6266 | 20.3616 |
| 24                   | 6.3412 | 7.9111 | 9.8497  | 12.2392 | 15.1786 | 18.7881 | 23.2122 |
| 25                   | 6.8485 | 8.6231 | 10.8347 | 13.5855 | 17.0001 | 21.2305 | 26.4619 |



| Future Value Factors |         |         |          |          |          |          |          |
|----------------------|---------|---------|----------|----------|----------|----------|----------|
| Year                 | 8%      | 9%      | 10%      | 11%      | 12%      | 13%      | 14%      |
| 27                   | 7.9881  | 10.2451 | 13.1100  | 16.7386  | 21.3249  | 27.1093  | 34.3899  |
| 28                   | 8.6271  | 11.1671 | 14.4210  | 18.5799  | 23.8839  | 30.6335  | 39.2045  |
| 29                   | 9.3173  | 12.1722 | 15.8631  | 20.6237  | 26.7499  | 34.6158  | 44.6931  |
| 30                   | 10.0627 | 13.2677 | 17.4494  | 22.8923  | 29.9599  | 39.1159  | 50.9502  |
| 31                   | 10.8677 | 14.4618 | 19.1943  | 25.4104  | 33.5551  | 44.2010  | 58.0832  |
| 32                   | 11.7371 | 15.7633 | 21.1138  | 28.2056  | 37.5817  | 49.9471  | 66.2148  |
| 33                   | 12.6760 | 17.1820 | 23.2252  | 31.3082  | 42.0915  | 56.4402  | 75.4849  |
| 34                   | 13.6901 | 18.7284 | 25.5477  | 34.7521  | 47.1425  | 63.7774  | 86.0528  |
| 35                   | 14.7853 | 20.4140 | 28.1024  | 38.5749  | 52.7996  | 72.0685  | 98.1002  |
| 36                   | 15.9682 | 22.2512 | 30.9127  | 42.8181  | 59.1356  | 81.4374  | 111.8342 |
| 37                   | 17.2456 | 24.2538 | 34.0039  | 47.5281  | 66.2318  | 92.0243  | 127.4910 |
| 38                   | 18.6253 | 26.4367 | 37.4043  | 52.7562  | 74.1797  | 103.9874 | 145.3397 |
| 39                   | 20.1153 | 28.8160 | 41.1448  | 58.5593  | 83.0812  | 117.5058 | 165.6873 |
| 40                   | 21.7245 | 31.4094 | 45.2593  | 65.0009  | 93.0510  | 132.7816 | 188.8835 |
| 41                   | 23.4625 | 34.2363 | 49.7852  | 72.1510  | 104.2171 | 150.0432 | 215.3272 |
| 42                   | 25.3395 | 37.3175 | 54.7637  | 80.0876  | 116.7231 | 169.5488 | 245.4730 |
| 43                   | 27.3666 | 40.6761 | 60.2401  | 88.8972  | 130.7299 | 191.5901 | 279.8392 |
| 44                   | 29.5560 | 44.3370 | 66.2641  | 98.6759  | 146.4175 | 216.4968 | 319.0167 |
| 45                   | 31.9204 | 48.3273 | 72.8905  | 109.5302 | 163.9876 | 244.6414 | 363.6791 |
| 46                   | 34.4741 | 52.6767 | 80.1795  | 121.5786 | 183.6661 | 276.4448 | 414.5941 |
| 47                   | 37.2320 | 57.4176 | 88.1975  | 134.9522 | 205.7061 | 312.3826 | 472.6373 |
| 48                   | 40.2106 | 62.5852 | 97.0172  | 149.7970 | 230.3908 | 352.9923 | 538.8065 |
| 49                   | 43.4274 | 68.2179 | 106.7190 | 166.2746 | 258.0377 | 398.8813 | 614.2395 |
| 50                   | 46.9016 | 74.3575 | 117.3909 | 184.5648 | 289.0022 | 450.7359 | 700.2330 |

| Future Value Factors |         |         |         |         |         |         |
|----------------------|---------|---------|---------|---------|---------|---------|
| Year                 | 15%     | 16%     | 17%     | 18%     | 19%     | 20%     |
| 1                    | 1.1500  | 1.1600  | 1.1700  | 1.1800  | 1.1900  | 1.2000  |
| 2                    | 1.3225  | 1.3456  | 1.3689  | 1.3924  | 1.4161  | 1.4400  |
| 3                    | 1.5209  | 1.5609  | 1.6016  | 1.6430  | 1.6852  | 1.7280  |
| 4                    | 1.7490  | 1.8106  | 1.8739  | 1.9388  | 2.0053  | 2.0736  |
| 5                    | 2.0114  | 2.1003  | 2.1924  | 2.2878  | 2.3864  | 2.4883  |
| 6                    | 2.3131  | 2.4364  | 2.5652  | 2.6996  | 2.8398  | 2.9860  |
| 7                    | 2.6600  | 2.8262  | 3.0012  | 3.1855  | 3.3793  | 3.5832  |
| 8                    | 3.0590  | 3.2784  | 3.5115  | 3.7589  | 4.0214  | 4.2998  |
| 9                    | 3.5179  | 3.8030  | 4.1084  | 4.4355  | 4.7854  | 5.1598  |
| 10                   | 4.0456  | 4.4114  | 4.8068  | 5.2338  | 5.6947  | 6.1917  |
| 11                   | 4.6524  | 5.1173  | 5.6240  | 6.1759  | 6.7767  | 7.4301  |
| 12                   | 5.3503  | 5.9360  | 6.5801  | 7.2876  | 8.0642  | 8.9161  |
| 13                   | 6.1528  | 6.8858  | 7.6987  | 8.5994  | 9.5964  | 10.6993 |
| 14                   | 7.0757  | 7.9875  | 9.0075  | 10.1472 | 11.4198 | 12.8392 |
| 15                   | 8.1371  | 9.2655  | 10.5387 | 11.9737 | 13.5895 | 15.4070 |
| 16                   | 9.3576  | 10.7480 | 12.3303 | 14.1290 | 16.1715 |         |
| 17                   | 10.7613 | 12.4677 | 14.4265 | 16.6722 | 19.2441 |         |
| 18                   | 12.3755 | 14.4625 | 16.8790 | 19.6733 | 22.9005 |         |
| 19                   | 14.2318 | 16.7765 | 19.7484 | 23.2144 | 27.2516 |         |
| 20                   | 16.3665 | 19.4608 | 23.1056 | 27.3930 | 32.4294 |         |
| 21                   | 18.8215 | 22.5745 | 27.0336 | 32.3238 | 38.5910 |         |
| 22                   | 21.6447 | 26.1864 | 31.6293 | 38.1421 | 45.9233 |         |
| 23                   | 24.8915 | 30.3762 | 37.0062 | 45.0076 | 54.6487 |         |
| 24                   | 28.6252 | 35.2364 | 43.2973 | 53.1090 | 65.0320 |         |
| 25                   | 32.9190 | 40.8742 | 50.6578 | 62.6686 | 77.3881 |         |

| Future Value Factors |           |           |           |           |           |     |  |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----|--|
| Year                 | 15%       | 16%       | 17%       | 18%       | 19%       | 20% |  |
| 26                   | 37.8568   | 47.4141   | 59.2697   | 73.9490   | 92.0918   |     |  |
| 27                   | 43.5353   | 55.0004   | 69.3455   | 87.2598   | 109.5893  |     |  |
| 28                   | 50.0656   | 63.8004   | 81.1342   | 102.9666  | 130.4112  |     |  |
| 29                   | 57.5755   | 74.0085   | 94.9271   | 121.5005  | 155.1893  |     |  |
| 30                   | 66.2118   | 85.8499   |           |           | 184.6753  |     |  |
|                      |           |           |           |           |           |     |  |
| 31                   | 76.1435   | 99.5859   | 129.9456  | 169.1774  | 219.7636  |     |  |
| 32                   | 87.5651   | 115.5196  | 152.0364  | 199.6293  | 261.5187  |     |  |
| 33                   | 100.6998  | 134.0027  | 177.8826  | 235.5625  | 311.2073  |     |  |
| 34                   | 115.8048  | 155.4432  | 208.1226  | 277.9638  | 370.3366  |     |  |
| 35                   | 133.1755  | 180.3141  | 243.5035  | 327.9973  | 440.7006  |     |  |
|                      |           |           |           |           |           |     |  |
| 36                   | 153.1519  | 209.1643  | 284.8991  | 387.0368  | 524.4337  |     |  |
| 37                   | 176.1246  | 242.6306  | 333.3319  | 456.7034  | 624.0761  |     |  |
| 38                   | 202.5433  | 281.4515  | 389.9983  | 538.9100  | 742.6506  |     |  |
| 39                   | 232.9248  | 326.4838  | 456.2980  | 635.9139  | 883.7542  |     |  |
| 40                   | 267.8635  | 378.7212  | 533.8687  | 750.3783  | 1051.6675 |     |  |
|                      |           |           |           |           |           |     |  |
| 41                   | 308.0431  | 439.3165  | 624.6264  | 885.4464  | 1251.4843 |     |  |
| 42                   | 354.2495  | 509.6072  | 730.8129  | 1044.8268 | 1489.2664 |     |  |
| 43                   | 407.3870  | 591.1443  | 855.0511  | 1232.8956 | 1772.2270 |     |  |
| 44                   | 468.4950  | 685.7274  | 1000.4098 | 1454.8168 | 2108.9501 |     |  |
| 45                   | 538.7693  | 795.4438  | 1170.4794 | 1716.6839 | 2509.6506 |     |  |
|                      |           |           |           |           |           |     |  |
| 46                   | 619.5847  | 922.7148  | 1369.4609 | 2025.6870 | 2986.4842 |     |  |
| 47                   | 712.5224  | 1070.3492 | 1602.2693 | 2390.3106 | 3553.9162 |     |  |
| 48                   | 819.4007  | 1241.6051 | 1874.6550 | 2820.5665 | 4229.1603 |     |  |
| 49                   | 942.3108  | 1440.2619 | 2193.3464 | 3328.2685 | 5032.7008 |     |  |
| 50                   | 1083.6574 | 1670.7038 | 2566.2153 | 3927.3569 | 5988.9139 |     |  |

## G. List of Professional Advisers

**Attorney:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Financial Planner:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Accountant or Other Tax Professional:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Stockbroker/Money Manager:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Banker:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Mortgage Broker:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Retirement Planning Adviser:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Title Company Agent:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Real Estate Broker:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Insurance Agent/Home:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Insurance Agent/Auto:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Insurance Agent/Life:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Other:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

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# INDEX

## A

- Accidental death/dismemberment insurance, 318
- Accountants, 90–91
  - CPAs, 90–91
  - enrolled agents, 90–91, 449
  - fees, 18, 90
  - forensic, 18, 90, 102, 104
  - working with, 76–77
  - See also* Tax professionals
- Accountants, when to use
  - copies of tax returns, 141
  - estimating tax bill, 140, 141
  - investment value issues, 290–291
  - referrals for financial planners, 88
  - retirement plan issues, 54
  - tax consequences of alimony, 387
  - tax implications of divorce, 154
- Account balance, retirement plans, 239
- Accrued benefits, retirement plans, 239
- Actuarial value, defined benefit plans, 244
- Actuaries, 94
- Airline frequent flyer points, 103, 105
- Alimony, 380–402
  - assets transferred in exchange for, 223, 348, 399
  - bottom-line decisions about, 400–401
  - cohabitation and, 396, 431
  - determining amount of, 18, 380–381, 383–389, 405
  - disability insurance and, 133
  - emotional realities, 382
  - family support payments, 52, 399–400
  - financial realities, 381–382
  - “frontloading,” 391
  - legal realities, 380–381
  - life insurance beneficiaries and, 131–132, 136
  - life insurance on income-earning spouse, 132, 136, 428
  - lump sum, 397–398
  - overview, 353–354
  - payment practicalities, 392–393, 395–396
  - vs. property settlement payments, 390
  - questions to ask attorney, 401
  - recordkeeping, 394, 421
  - remarriage and, 390, 393
  - during separation, 56
  - settlement agreement changes, 422
  - tax consequences, 17, 24, 153, 386–389
  - temporary, 17, 67, 123, 124, 125, 153
  - termination date, 393, 422
  - waving, 422
- Alimony, failure/inability to pay
  - bankruptcy and, 260, 337, 396
  - collecting past-due payments, 148
  - family support and, 399
  - nonenforcement of court orders, 14–15
  - settlement agreement changes, 422
  - wage garnishments, 392
- Alimony buyouts (lump sum alimony), 397–398
- “All at once” syndrome, 37
- American Arbitration Association, 87
- Annual Credit Report Service, 54
- Annuities. *See* Deferred annuities; Tax-sheltered annuities (TSAs)
- Annuity contracts, retirement plans, 239
- Annulments, tax consequences, 150
- Appraisers
  - business, 94
  - real estate, 287–288
  - resources, 92, 200, 448
  - when to use, 18, 200
- Arbitration/arbitrators, 87
- Arrears, being in. *See* Child support, failure/inability to pay
- Assets
  - business, valuation during separation, 56
  - on cash flow worksheets, 176
  - defined, 172
  - determining value of, 18
  - distinguished from income, 172–173
  - easy-to-forget, 102–103, 106
  - employee benefits as, 316
  - in exchange for alimony, 399
  - future value factors, 456–461
  - house in exchange for, 223
  - Marital Balance Sheets, 405–409
  - miscellaneous, dividing, 407
  - on net worth statements, 162–164, 165–170, 427
  - posting to guarantee child support, 376



prenuptial agreements to protect, 432–433  
taken by spouse, 46  
wills to distribute, 135–136, 420, 429  
*See also* Investments; Real estate; specific assets

Assets, hidden  
checklist, 104  
discovery, legal, 18, 58, 102, 140, 159–160  
searching for, 18, 90, 101–102, 159, 160  
tax documents to uncover, 99, 106–107, 108–111

Assets, selling  
capital gains/losses, 9, 20, 109–110, 193, 194, 219  
to raise cash, 342, 425  
for separation/postdivorce income, 123

Attorneys. *See* Lawyers

Automatic stay, bankruptcy, 340

## B

Balance sheet summary, net worth statements, 171

Bank accounts. *See* Deposit accounts

Bankers, working with, 91

Bankruptcy, 335–347  
alimony and, 396  
Chapter 7, 340, 343–344  
Chapter 11, 340  
Chapter 13, 340, 343–344  
court challenges to, 344  
filed by spouse alone, 337–339, 341, 342, 348  
guidelines, 341–342  
information resources, 347  
marital debts and, 337–339  
nondischargeable debts, 335, 337, 339, 340, 343–344  
pros and cons of filing for, 335, 341, 345  
questions to ask attorney, 349  
retirement benefit payments and, 260  
same-sex partners and, 348  
settlement agreement clauses, 338, 341  
terminology, 340

Bankruptcy Abuse Prevention and Consumer Protection Act (2005), 343

Bankruptcy estate, defined, 340

Banks, for secured credit cards, 63  
*See also* Deposit accounts

Benefits. *See* Employee benefits; Retirement plans/benefits

Bonds, investment. *See* Stocks, bonds, and mutual funds

Bonds, posting to guarantee payment of child support, 376

Brokerage accounts  
account charges, 289  
closing, 65–66  
collecting/organizing statements, 100  
freezing transactions, 69  
interest earned, 108  
redemption fees, 289  
sample letter to broker, 70  
trading fees, 289  
*See also* Stocks, bonds, and mutual funds

Business continuation insurance coverage, 134

Businesses  
appraising value of, 94  
corporations, 94, 110  
earnings on cash flow worksheets, 175  
hiding assets via, 104  
partnerships, 110, 148, 288–289, 307–308  
prenuptial agreements to protect, 432–433  
Schedule C, profit and loss, 109  
sole proprietorships, 94  
tax losses, filing status and, 148  
*See also* Real estate, investment properties

## C

Cafeteria plans, as employee benefit, 319–320

Capital gains/losses  
exclusion for family home, 20, 193, 194, 219  
on investment dividends, 9  
on Schedule D, 109–110

Capital improvements, examples, 207–209

Cash flow  
defined, 173  
questions to ask attorney, 177

Cash flow statements, 18

Cash flow worksheets, 173–187  
child-associated costs, 175  
expense estimates, 176–177, 178–187  
income sources, 174, 175–176, 178–187  
updating postdivorce, 427

Cashless exercise, stock options, 324

Cash or cash-equivalent assets  
financial value, 290  
hidden, 104  
legal value, 287  
risk-free nature of, 24–25

Cash value life insurance policies, 306–307, 313

Certified Financial Planners, 88

Certified public accountants (CPAs), 90–91

Chartered Financial Consultants, 88

Checking accounts. *See* Deposit accounts

Child abuse. *See* Domestic violence

- Childcare costs
  - baby-sitting exchanges, 425
  - child/dependent care tax credit, 147, 367–368
  - estimating for child support, 361
- Child custody
  - health insurance and, 128–129
  - joint, 355, 356, 358, 368
  - legal and physical components, 357–358
  - moving children out of state, 51
  - parental rights protection, 49, 354
  - parenting dos and don'ts, 359–360
  - postdivorce review of agreements, 421
  - resources, 447
  - settlement agreement changes, 423
  - tax deductions and, 144, 367–368
  - temporary orders, 17
  - visitation rights, 17, 355, 423
- Children
  - estate planning for, 135–136
  - expenses related to, 175, 383
  - impact of parental fighting on, 354
  - as life insurance beneficiaries, 131–132
  - moving out of state, 51
  - postdivorce review considerations, 421
  - understanding of financial realities, 34
- Child support, 353–380
  - bankruptcy and, 337
  - bottom-line decisions about, 380
  - court approval of, 355
  - custodial accounts, 104
  - emotional realities, 356–357
  - family support payments, 52, 399–400
  - financial realities, 356, 367
  - health insurance as, 317
  - how and when paid, 372–375
  - legal realities, 355
  - life insurance on income-earning spouse, 132, 428
  - Omnibus Reconciliation Act, 129, 365
  - overview, 353–354
  - postdivorce review of, 421, 428
  - QMSCO, 129, 365–366, 402
  - recordkeeping, 421
  - resources, 447
  - settlement agreement changes, 423
  - stock option income for, 110
  - tax issues, 24, 144, 153, 367–368, 379
  - temporary orders, 17
- Child support, determining amount of
  - estimating costs, 18, 360–363, 364, 405
  - income needs, 366–367
  - income shares method for computing, 369–370
  - Online Support Calculator, 370–371
  - percentage of income method for computing, 370
  - state guidelines, 368–369
- Child support, failure/inability to pay
  - collection strategies, 375–379
  - consequences of, 148, 356, 376–379
  - finding missing parents, 378
  - IRAs to cover payment, 260
  - negotiating, 375–376
  - nonenforcement of court orders, 14–15
  - QDROs and, 379
  - settlement agreement changes, 423
  - state laws to enforce payment, 355
  - wage garnishments, 377, 392
- CMAs (comparative market analyses), 202
- COBRA (Consolidated Omnibus Budget Reform Act), 128, 130
- Cohabitation, dangers of, 396, 430–432
- Collaborative divorce, 85–87
- Collectibles
  - dividing, 71
  - financial value, 308–312
  - legal value, 289
  - selling, 272
- College for Financial Planning, 88
- Commissions, paid to professionals, 76, 91, 92, 204
- Community debts, 334
- Community property states
  - allocation of family home, 191
  - filing tax returns, 143, 144, 145
  - jointly owned property, 157
  - prenuptial agreements and, 432
  - responsibility for debts, 334
  - separately owned property, 158
- Comparative market analyses (CMAs), 202
- Consolidated Omnibus Budget Reform Act (COBRA), 128, 130
- Corporations
  - appraising value of, 94
  - income taxes on S corporations, 110
- Cost-cutting strategies, 424–425
- Cost of living adjustments (COLA), retirement plan benefits, 245, 258
- Counselors and therapists, 92
  - credit counselors, 93, 342, 346
  - marriage counselors, 45
  - resources, 447
  - when to use, 360
- Counteroffers, settlement, 410–413
- County ordinances, on alimony payments, 381, 384

## Court orders

- to access tax information, 140
- alimony issues, 153, 381, 396
- child support issues, 153, 376
- consequences of ignoring, 46
- nonenforcement of, 14–15
- settlement agreement changes, 422–423
- stock option issues, 327

## Courts of equity, defined, 11

## Court trials

- disadvantages of, 10, 11, 18, 30
- preparing for, 414
- statistics, 10
- when necessary, 15, 18, 414

## Covenant marriages, 15

## CPAs (certified public accountants), 90–91

## “Crazy time,” 31

## Credit counselors, 93, 342, 346

## Credit/credit cards

- closing, 62–65
- collecting/organizing statements, 100
- establishing in own name, 62–63
- expense estimates, 176
- joint accounts, 53, 62–63
- paying off balance, 65, 338–339
- postdivorce changes, 420
- secured, 63
- for separation/postdivorce income, 53, 65, 123, 124

*See also* Debts; Equity credit lines; Loans

## Credit reports

- checking, 54–55, 100
- child support nonpayment and, 377
- damaged by ex-spouse, 422

## Custodial accounts, to hide assets, 104

## Custodial parents

- defined, 355
- family home rights, 190
- tax deductions for, 367–368

*See also* Child custody

## Custodial/trust agreements, 239

## D

## Date of Divorce (DOD), 50

## Date of Marriage (DOM), 50

## Date of Separation (DOS), 50, 286–287

## Debts, 332–350

- credit counselors, 93, 342, 346
- dividing, 334, 347–348, 405–409, 422
- ex-spouse's failure to pay, 422
- gifts to defraud creditors, 111

in home-equity-value calculations, 202–204

house as security for, 206

information resources, 348, 350

legal vs. financial realities, 8

listing, 17, 334–335, 336, 342

marital, spouse's payment of, 123

for medical expenses, 333

phony debts, 104

postdivorce payment schedules, 428

postdivorce responsibility for, 52

postdivorce review of, 420

questions to ask attorney, 349

responsibility for, 159, 332–333

during separation, 52

*See also* Bankruptcy; Credit/credit cards; Loans

## Deeds (title documents), 100, 134–135, 419

## Defense of Marriage Act, 348

## Deferred annuities

described, 235

early withdrawal penalties, 249–250

financial value, 241, 254

tax considerations, 249

## Defined benefit plans (pension plans)

actuary services, 94

described, 231, 234, 239

dividing, 262–263

financial value, 231, 245, 251–252, 254

government/military pensions, 234

IRS regulations, 247–249

legal value, 243, 244

QDROs and, 234, 240–243, 241, 329, 379

separation and, 53–54

survivor benefits, 260

transferred in exchange for alimony, 399

## Defined contribution plans

401(k) plans, 232, 250–251, 253

403(b) plans, 232

457 plans, 232

described, 232, 239

dividing, 261–262

ESOPs, 232, 250–251, 253

financial value, 250–251, 253

IRS regulations, 247–249

legal value, 231, 241, 243

money purchase plans, 232, 250–251, 253

profit-sharing plans, 232, 250–251, 253

QDROs and, 241

salary savings plans, 232, 250–251, 253

thrift plans, 232, 250–251, 253

*See also* Tax-sheltered annuities (TSAs)

## Dependent care assistance programs, 147, 319, 367–368

Deposit accounts, individual, 17, 63, 66, 424

Deposit accounts, joint, 66–67

assets taken from, 46, 67

closed/frozen, 17, 66–67, 68, 131

collecting/organizing statements, 100, 135

disclosing liquidation of, 67

dual-signature, 66

early withdrawal penalties, 290

interest on, 108

legal value, 287

postdivorce changes, 420

present value factors, 450–455

questions to ask attorney, 72

restraining orders to prevent use of, 72

Depositions, 102, 160

Disability insurance, 133, 136, 317–318

Discharge, bankruptcy, 340

Discovery, legal, 18, 58, 102, 140, 159–160

"Disneyland Dads," 356

District attorneys, to collect unpaid child support, 378

Dividends, 9, 108, 296

Divorce ceremonies, 416

Divorce filing, 17

Divorce financial analysts, 89–90

Divorce laws, state and local variations, 11

Divorce services, do-it-yourself, 96

Divorce settlements

finalizing, 414–416

follow-through, 418–421

legal vs. financial realities, 3

negotiating, 18, 404–416

out-of-court, 10

postdivorce changes, 422–423

postdivorce home ownership agreements, 194

postdivorce review, 421

rush to reach, 25, 27

time required to achieve, 21–22

*See also* Alimony; Child custody; Child support; Settlement agreements

Dollar cost averaging, 424

Domestic partnerships, 4, 348

Domestic Relations Orders, 241

*See also* Qualified Domestic Relations Orders (QDROs)

Domestic violence

mediation and, 84

professional help for, 360

resources, 448

restraining orders, 48, 72

Driver's licenses, nonpayment of child support and, 377

## E

Early withdrawal penalties (excise taxes)

deferred annuities, 249–250

deposit accounts, 290

insurance, 250, 290

IRAs, 249–250, 258–259, 261

retirement benefits, 249–250, 261

TSA's, 249–250

Earned income tax credit, 147, 367

Economic misconduct

gifts to defraud creditors, 111

liability for spouse's dishonesty with IRS, 145, 148

phony debts, repayment of, 104

*See also* Assets, hidden

Educational assistance programs, 320

Educational costs

estimating for child support, 361–362

responsibility for, 332

tax deductions for, 368

trusts to pay, 131

EE U.S. Savings bonds, financial value, 290–291

Emergency cash reserves, 362, 428

Emotional issues, 30–41, 43–46

alimony and, 382

"all at once" syndrome, 37

child support and, 356–357

conflict-increasing actions, 68

desire for reconciliation, 31

desire to protect children from financial realities, 34

divorce ceremonies and, 415

effect of fighting on children, 354

fear of asking questions, 13

feeling overwhelmed, 5

feeling responsible for partner's welfare, 23

financially focused mental attitude, 37

grieving, 38

hostility and resentment, 23, 62, 84

intimidation, 36, 84

journaling, 41

managing emotions, 38–39

math phobias, 27

parenting dos and don'ts, 359–360

postdivorce, 418, 433–435

relationship-destroying behaviors, 35

resistance to change, 22–23

revenge, 30

rushing through process, 30

safeguarding sanity, 33

self-esteem, 41

- separation and, 48
  - sore spots, 33–34
  - spiritual crises, 41
  - stress reduction, 31–32
  - working with attorneys and, 40
  - Employee assistance programs, 321
  - Employee benefits (nonwage compensation), 316–321
    - accidental death/dismemberment insurance, 318
    - cafeteria plans, 319–320
    - dependent-care programs, 319
    - disability insurance, 133, 136, 317–318
    - educational assistance programs, 320
    - employee assistance programs, 321
    - group life insurance, 318
    - as income vs. assets, 316
    - legal services, group, 320–321
    - nonqualified deferred compensation plans, 236, 241, 329
    - questions to ask attorney, 330
    - severance plans, 320
    - on W-2s, 107
    - See also* Health insurance; Retirement plans/benefits; Salaries, tips, other compensation; Stock options
  - Employee benefit statements, defined, 239
  - Employee Retirement Income Security Act (ERISA), 239
  - Employee Stock Ownership Plans (ESOPs), 232, 250–251, 253
  - Employee stock purchase plans, 325–326
    - See also* Stock options
  - Employers
    - collusion to hide assets, 104
    - as retirement plan administrators, 263–265
    - sample letter to spouse's employer, 264–265
  - Employment
    - QDROs and, 330, 379
    - second jobs, 342
    - wage garnishments, 377, 422
    - for women, resources, 448
  - Enrolled agents (EAs), 90–91, 449
  - Entrepreneurial attitude toward divorce, 13
  - Equifax, 54
  - Equitable distribution states
    - home ownership allocation, 191, 218
    - marital property ownership, 157–158, 333, 432
    - prenuptial agreements and, 432
  - Equitable Relief, rules, 145–146
  - Equity (legal) value
    - of family home, 202–204
    - of investments, 286–287
  - Equity credit lines (home equity loans)
    - closing joint accounts, 65–66, 427
    - in home-equity-value calculations, 202–204
    - for postdivorce cash, 426
  - Estate planning
    - changing documents to reflect divorce, 135–136
    - collecting/organizing documents, 100
    - continued home ownership and, 221
    - information resources, 137
    - postdivorce review of, 420, 429–430
    - trusts, 135–136
    - wills, 131, 135–136, 420, 429
  - Excise taxes. *See* Early withdrawal penalties
  - Exemptions (exempt property), bankruptcy and, 340
  - Exercise and exercise date, stock options, 324
  - Exercise fees, stock options, 327
  - Expenses
    - on cash flow worksheets, 176–177, 178–187
    - cost-of living, planning for, 424
    - emergency cash reserves, 362, 428
    - to fix up home, 205
    - See also* Debts
  - Experian National Consumers Assistance Center, 55
  - Expiration date, stock options, 324
- ## F
- Fair market value
    - of family home, 200–202
    - of income-producing property, 297–300
  - Family court, bankruptcy and, 337
  - Family home, 190–225
    - current fair market value, 200–202
    - equity credit lines, 65–66, 202–204, 426, 427
    - equity value, 20, 202–204
    - as marital vs. separate property, 217–218
    - moving out of, tax consequences, 51
    - questions to ask attorney, 224
    - questions to ask financial advisor, 225
    - as security for spouse's debt, 206
    - state laws on allocating, 190, 191
    - tax deductions for, 197–198, 429
    - total monthly housing cost, 195–200
    - transferred in exchange for alimony, 399
    - transferring to spouse, 218–219, 223, 247
    - true value of, calculating, 194–224
    - See also* Mortgages; Real estate
  - Family home, selling
    - buying out spouse's share, 192, 218–219, 222–224
    - capital gains exclusion, 193, 194, 219
    - costs of, 20, 92, 204–205

- in future, 192, 194–195, 212–217, 220–221
- vs. keeping, 192, 409
- selling share to spouse, 194
- with spouse, 194, 210–212, 219
- state laws, 191
- as taxable event, 23
- tax basis, 207–210
- See also* Appraisers
- Family Law Reporter (Bureau of National Affairs), 442
- Family necessities, 52, 124, 332, 333
- Family Support Act (1988), 368–369
- Family support payments, 399–400
- Federal laws
  - on bankruptcy, 337–338
  - Bankruptcy Abuse Prevention and Consumer Protection Act, 343
  - COBRA, 128, 130
  - enforcement of child support orders, 355
  - Family Support Act, 368–369
  - Omnibus Reconciliation Act, 129, 365
  - QMSCO, 129, 365–366, 402
  - on retirement plans, 237
  - same-sex couples/marriage, 4, 348
  - Taxpayer Relief Act, 51
  - See also* Qualified Domestic Relations Orders (QDROs)
- Fiduciary responsibility of spouses to each other, 102
- Filing status, tax returns
  - joint vs. separate, 143, 147–148
  - postdivorce review of, 429
  - requirements, 141–142
  - See also* Community property states; specific filing statuses
- Financial (after-tax/after-sale) value of investments, 289–311
  - cash and cash equivalents, 290
  - insurance, 305–306
  - real estate, 297–304
  - stocks, bonds, and mutual funds, 290–296
- Financial advisors, 87–89
  - for alimony issues, 387
  - choosing, 88–89
  - divorce financial analysts, 89–90
  - for family home issues, 224
  - how they are paid, 88
  - resources, 88, 449
  - for retirement plan issues, 54
  - tax implications of divorce, 154
  - when to use, 89
- Financial assistance, resources, 449
- Financial fact-finding, 98–116
  - decision-making, 99
  - discovery, legal, 18, 58, 102, 140, 159–160
  - gifts, 111
  - information analysis, 98
  - information gathering, 98, 99–101
  - questions to ask attorney, 112
  - tax returns, 108–111
  - W-2 forms, 106–107
  - See also* Assets, hidden
- Financial Facts Checklist, 58, 112–116
- Financial needs following divorce, legal vs. financial realities, 12–14
- Financial planning, 118–125
  - anticipated financial commitments, 119
  - estimating cost to rear children, 360–363
  - goals, 118, 119, 120, 122
  - for income during separation, 123
  - income sources, 123–124
  - for major upcoming life events, 118, 121
  - for retirement, 229–230
  - See also* Estate planning
- Financial planning chart, 120–122
- Financial realities
  - actual costs, 20–22
  - of alimony, 381–382
  - of child support, 356, 367
  - of cohabitation, 430–432
  - consequences of ignoring, 46
  - desire to protect children from, 34
  - doing homework before negotiating, 404–405
  - emotional acceptance of, 43–44
  - focusing on, 37, 40–41
  - vs. legal realities, 3, 8–18, 191, 243, 366–367
  - long-term thinking, 25, 27
  - math phobias, 27, 40
  - moving costs, 51
  - postdivorce assessments, 418–421, 433–435
  - postdivorce cash limitations, 424–427
  - postdivorce planning tips, 427–430
  - risk-free nature of cash, 24–25
  - risk of financial connections, 22–23, 53, 62, 347–348
- Forms
  - help in completing, 161
  - See also* specific IRS forms
- For sale by owner (FSOB), 204
- 401(k) plans, 231, 232, 253
- 403(b) plans, 232
- 457 plans, 232
- “Frontloaded” alimony payments, 391
- Full retirement plans, defined, 239

Future value factors  
calculating, 213–217  
chart, 213, 456–461

## G

Gain, stock options, 324  
Gender differences, 26  
Gifts, how to handle, 111  
Goal-setting, 118–120, 122, 424, 436–437  
Grant price, stock options, 324  
Grants, stock options, 324, 328  
Grief process, 38  
Growth of investments, 273, 274  
Guardians  
to manage insurance proceeds for children,  
131–132  
postdivorce naming of, 429

## H

Head of household, tax filing status, 142, 368  
Health insurance, 128–130  
as alimony, 136  
as child support, 317, 362, 364  
COBRA, 128, 130  
as employee benefit, 317  
Health Savings Accounts (HSAs), 318–319  
Omnibus Reconciliation Act, 129, 365  
postdivorce review of, 420  
QMSCO, 129, 365–366, 402  
tax issues, 317  
HH Bonds, financial value, 291  
Holding periods  
of assets, 456–461  
of stock options, 324  
Home, family. *See* Family home  
Home equity loans. *See* Equity credit lines  
Home office depreciation, 210  
Hope and Lifetime Learning costs, tax deductions  
for, 368  
Household property, dividing, 71  
*See also* Assets  
Housing costs, calculating, 195–200

## I

Incentive stock options (ISOs), 325–326  
Income  
alimony based on, 385–386, 396  
alimony treated as, 153  
on cash flow worksheets, 174, 175–176,  
178–187

child support based on, 368, 369, 370  
as community property, 144  
defined, 172  
distinguished from assets, 172–173  
employee benefits as, 316  
income/alimony gap, 385  
from investments, 273, 274  
nonqualified deferred compensation plans, 329  
postdivorce, planning for, 123–124  
retirement benefits as, 237  
during separation, 55, 123  
from stock options, 326–327  
tax returns to uncover, 106–111  
*See also* Salaries, tips, other compensation  
Income-producing property. *See* Real estate,  
investment properties  
Income shares method for computing child support,  
369–370  
Income taxes  
due during separation, 55  
establishing credit based on, 62–63  
on retirement plan benefits, 247–249  
S corporations/partnerships and, 110  
state, 247, 249  
tax-deferred account withdrawals and, 425–426  
*See also* Tax returns  
Indemnity clauses, in marital settlement agreements,  
150  
Individual Retirement Accounts. *See* IRAs  
Inflation, 24–25  
future value factor chart, 456–461  
present value factor chart, 450–455  
Innocent Spouse Relief, rules, 145–146, 148  
Insurance, 128–134  
accidental death/dismemberment, 318  
annuity contracts, 239, 305  
auto, 91  
business continuation coverage, 134  
disability, 133, 136  
early withdrawal penalties, 250, 290  
financial value, 305–307  
gathering information about, 100  
legal, prepaid, 444  
legal value, 288  
postdivorce review of, 420, 428  
prepayments, 103  
questions to ask attorney, 136  
*See also* Health insurance; Life insurance  
Insurance agents, 76, 91–92, 128  
Interest  
on income accounts, 108  
on loans to purchase share of home, 197  
on mortgage, 108, 197–199, 223–224

- Internal Revenue Rulings 59-60 and 83/120, 94
  - Interrogatories, 160
  - Investment Chart
    - form, 278–285
    - instructions for completing, 286–311
  - Investments, 269–314
    - balancing security, income, and growth, 273, 274
    - collecting/organizing documents, 69, 135
    - concepts to consider, 269–277
    - dividing, 312–314
    - earnings, on cash flow worksheets, 175–176
    - electronic transactions, 69
    - financial value, 289–311
    - hidden costs, 289–290
    - inflation, 276
    - interest earned, 108
    - joint accounts, 69, 70
    - legal value, 286–287
    - listing, 69, 286
    - ownership, 286
    - postdivorce planning, 424
      - for retirement plans, 230
    - risks associated with, 271
    - sample letter to broker, 70
    - selling vs. keeping, 271–272, 311–312
    - settlement steps, 277, 286–314
    - tax basis, 273–275, 289
    - tax consequences of selling, 271–272, 289
    - total return vs. yield, 276–277
    - valuation during separation, 56
    - See also* Retirement plans/benefits; Stock options; Stocks, bonds, and mutual funds
  - IRAs (Individual Retirement Accounts)
    - age to begin taking, 242
    - dividing, 261
    - early withdrawal penalties, 249–250, 258–259, 261
    - financial planning role, 429
    - financial value, 250–251, 253
    - legal value, 241
    - personal, 254
    - QDROs and, 261
    - rolling over, 255
    - Roth, 235, 242, 249, 254
    - SAR-IRAs, 233, 250–251, 253
    - SEP-IRAs, 233, 241, 250–251, 253
    - Simple IRAs, 233, 250–251, 253
    - tax considerations, 249, 250, 368
    - traditional, 235, 241, 254
    - trust/custodial agreements, 239
    - withdrawing cash from, 258–259, 260, 425–426
    - See also* Retirement plans/benefits
  - IRS (Internal Revenue Service)
    - definition of income, 172
    - divorce issues and, 23–24
    - spouses settles bill with, 149–150
    - See also* Tax entries
  - IRS Form 1040, 387
  - IRS Form 1099-MISC, 111
  - IRS Form 4506, 99, 141
  - IRS Form 8332, 367
  - IRS Form K-1, 110, 308
  - IRS Form W-2, 106–111
  - IRS publications on divorce, 141
  - IRS Restructuring and Reform Act (1998), 145–146
  - IRS Schedule A, 108
  - IRS Schedule B, 108
  - IRS Schedule C, 109
  - IRS Schedule D, 109–110
  - IRS Schedule E, 110–111
  - ISOs (incentive stock options), 325–326
- ## J
- Joint accounts, 62–72, 332–333
    - See also* Brokerage accounts; Credit/credit cards; Debts; Deposit accounts; Equity credit lines; Investments
  - Jointly owned (marital) property
    - cohabitation and, 430–431
    - dividing, 347–348, 381, 406, 422
    - documenting before moving out, 58
    - equitable distribution states, 157–158, 191, 218, 333, 432
    - family home as, 217–218
    - household, 71
    - inventories, 58
    - Marital Balance Sheets, 405–409
    - questions to ask attorney, 72
    - restraining orders to prevent removal of, 72
    - retirement benefits as, 237
    - safe-deposit boxes, 70–71
    - special collections, 71
    - state laws and, 156
    - stock options as, 326–327
    - tax refunds as, 152–153
    - title documents, 67–68, 100, 134–135, 419
    - See also* Assets; Community property states; Real estate; Separate property
  - Joint tenancy property
    - changing title to, 67
    - cohabitation and, 430–431
    - defined, 135
  - Judges, variations among, 10, 11



## L

- Law libraries, 441–442
- Lawyer directories, 444
- Lawyer fees
  - determining amount of, 18
  - for discovery, 58
  - to enforce divorce agreements, 15
  - how they are paid, 76, 77–78
  - initial consultations, 12
  - strategies for minimizing, 3, 12
  - who pays, 12, 17, 78
- Lawyer referral panels, 444
- Lawyers
  - choosing, 75, 80–82
  - collaborative divorce and, 85–87
  - group services, employee benefit, 320–321
  - initial sessions, 76
  - limited scope representation, 78–79
  - resources, 443–444, 446
  - responsibility of, 12–13
  - spouse's, 12
  - working with, 17, 40, 76–77, 79–80, 444–445
- Lawyers, when to use
  - account closure issues, 72
  - alimony issues, 387, 401
  - bankruptcy issues, 349
  - cash flow issues, 177
  - debt issues, 349
  - family home issues, 205, 224
  - income/hidden assets issues, 112, 140
  - insurance issues, 136
  - interim QDRO filing, 243
  - negotiating settlements, 18
  - outcome assessments, 11
  - parental rights issues, 354
  - retirement plan issues, 54, 263
  - separation issues, 50, 58–59
- Legal plans, group, 444
- Legal realities
  - of alimony, 380–381
  - of child support, 355
  - consequences of ignoring, 46
  - vs. financial realities, 3, 8–18, 191, 243, 366–367
  - postdivorce, 418–421
- Legal research
  - discovery, 18, 58, 102, 140, 159–160
  - law libraries, 17, 441–442
  - online, 445–446
  - resources, 442
  - on separation, 58–59
- Liabilities
  - in home-equity-value calculations, 202–204
  - in net worth statements, 164, 165–170, 172, 427
  - See also* Debts; Expenses; Loans
- Liability, for spouse's dishonesty, 145–146, 148
- Licenses (professional), nonpayment of child support and, 377
- Liens, property, 202–204
- Life insurance, 131–133
  - dividing, 313
  - estate planning role, 136
  - group term, 318
  - on income-earning spouse, 132, 136, 428
  - reevaluating coverage, 91, 305–306, 420, 428
- Limited partnerships
  - financial value, 307–308
  - legal value, 288–289
  - secondary markets for, 288
- Limited scope representation (unbundled legal services), 78–79
- Living together. *See* Cohabitation
- Loans
  - collecting/organizing documents, 100
  - from family/friends, 425
  - fraudulent, 66
  - to purchase spouse's share of house, 197, 222–224
  - for separation/postdivorce income, 123, 124, 348
  - See also* Debts; Equity credit lines; Mortgages
- Lottery winnings, withheld for nonpayment of child support/alimony, 376
- Lump sum alimony settlements (alimony buyouts), 397–398

## M

- Magazine subscriptions, how to handle, 106
- Margin accounts, closing, 65–66
- Marital Balance Sheets
  - sample, 408–409
  - tallying, 405–406
- Marital interest percentage method, marital portion of retirement plans, 244
- Marital property. *See* Jointly owned property
- Marital settlement agreements. *See* Settlement agreements
- Marital settlements. *See* Divorce settlements
- Marriage
  - accepting when it is over, 43–45
  - same-sex couples and, 4, 348
- Marriage counseling, 45

Married filing jointly, tax filing status  
 annulled marriages and, 150  
 dividing liability or refunds, 150–153  
 liability for spouse's dishonesty, 145, 148  
 pros and cons, 143, 147  
 requirements, 142  
 responsibility when signing, 147–150

Married filing separately, tax return status  
 in community property states, 143, 144  
 liability for spouse's dishonesty, 219  
 pros and cons, 143  
 requirements, 142

Means test, bankruptcy, 340

Mediators/mediation, 18, 82–85, 358, 446–447

Medical/dental expenses  
 debts incurred for, 333  
 estimating, 108, 362  
 tax issues, 317, 368

Medicare wages and tips, on W-2s, 107

Memorandum of understanding, mediated divorces, 83

Men vs. women, wage gap, 26

Missing parents, finding, 378

Money purchase plans, 232, 250–251, 253

Mortgages  
 in home-equity-value calculations, 202–204  
 interest, 108, 197–199, 223–224  
 monthly payments, 192, 195  
 refinancing, 192, 197, 222

Mortgages, second. *See* Equity credit lines

"Most wanted" lists, for nonpayment of child support, 377

Motor vehicles  
 driver's license loss for nonpayment of child support, 377  
 as expenses, 176  
 insurance, 91  
 registration, 135, 419  
 title documents, 135

Moving out of house  
 anxiety about, 31–32  
 copying documents before, 58  
 pros and cons, 48, 51  
 protecting parental rights, 49  
 tax consequences, 51  
*See also* Separation

Mutual funds. *See* Investments; Stocks, bonds, and mutual funds

Myvesta, 93

## N

Name changes, postdivorce, 419

National Association of Enrolled Agents, 91

National Foundation for Credit Counseling, 93

Negotiations. *See* Divorce settlements, negotiating

Net worth statements  
 asset assessments, 162–164  
 balance sheet summary, 171  
 to divide debts, 347  
 liabilities calculations, 164, 172  
 overview, 160–161  
 sample, 165–170  
 updating postdivorce, 427

Noncustodial parents  
 defined, 355  
 visitation rights, 17, 355, 423  
*See also* Child custody

Nondischargeable debts, bankruptcy, 335, 337, 339, 340, 343–344

Nonqualified deferred compensation plans, 107, 236, 241, 329

Nonstatutory (nonqualified) stock options, 326

Nonwage compensation. *See* Employee benefits

## O

Offer in compromise, to settle tax bill, 149

Offers, settlement, 410–413

Omnibus Reconciliation Act (1993), 129, 365

Online resources  
 divorce information, 16  
 do-it-yourself divorce services, 96  
 home fair market values, 201  
 legal research, 445–446  
 Online Support Calculator, 370–371  
 retirement plan issues, 237  
 stock options, 328–329

## P

Paralegals, 93–94, 443

Parental rights, 49, 354  
*See also* Child custody

Parenting during divorce, dos and don'ts, 359–360

Parents Without Partners, 424–425

Partnerships  
 income taxes, 110, 308  
 limited, value of, 288–289, 306–308  
 tax losses, filing status and, 148

Passports, denied for nonpayment of child support, 378

Pension plans. *See* Defined benefit plans; Retirement plans/benefits

Percentage of income method for computing child support, 370

Physical custody. *See* Child custody

Postdivorce issues, 418–437

changing settlements, 422–423

cohabitation, 396, 430–432

emotional assessment, 433–435

financial review/planning, 418–421, 424–430

goal-setting, 424, 436–437

investments, 424

limited resources, 424–427

name changes, 419

recordkeeping, 421

remarriage, 57, 390, 393

Prenuptial agreements, 431, 432–433

Present Value Factors chart, 245, 450–455

Private investigators, working with, 95–96

Procedures and model orders for division, retirement plans, 239

Professional dues, how to handle, 106

Professionals, 75–96

actuaries, 94

arbitrators, 87

bankers, 91

contact information, 100, 462–465

credit counselors, 93, 342, 346

fees, 76, 95

insurance agents, 76, 91–92, 128

limited responsibility of, 12–13

low-cost services, 75

mediators, 18, 82–85, 358, 446–447

paralegals, 93–94, 443

private investigators, 95–96

questions to consider, 75–77

stockbrokers/money managers, 90

tax assistance, 449

therapists, 92, 360, 447

typing services, 93–94, 443

when to use, 441

*See also* Appraisers; Financial advisors; Lawyers;

Real estate agents

Profit-sharing plans, 232, 250–251, 253

Property. *See* Assets; Community property states;

Jointly owned property; Real estate; Separate property

Property garnishments, for nonpayment of child support, 377

Property liens, for nonpayment of child support, 376

Property settlement payments, vs. alimony, 390

Property taxes, 103, 108, 199

## Q

Qualified (ERISA) retirement plans

defined, 239

early withdrawal penalties, 249

financial value, 253, 254

IRS regulations, 247

as subject to QDROs, 241

Qualified Domestic Relations Orders (QDROs), 240–243

bankruptcy and, 260

child support, tax concerns, 379

defined, 240

interim, 241, 243

retirement plans subject/not subject to, 232, 234, 241, 259, 329

Qualified Medical Child Support Orders (QMSCOs), 129, 365–366, 402

## R

Ram Research Group, 63

Real estate

cohabitation and, 430–431

future value factors, 456–461

property taxes, 103, 108, 199

selling, tax consequences, 23

timeshares, 106

title documents, 100, 134–135, 419

*See also* Appraisers; Family home

Real estate, investment properties

appraising value of, 287–288

capital gains income, 110

financial value, 297–304

Real estate agents

commissions, 92, 204

for fair-market-value estimates, 200, 202, 287, 297

working with, 92

Real estate investment trusts (REITs), appraising value of, 287, 297

Reciprocal beneficiary relationships, 4

Reconciliation, 31, 45

Recordkeeping

alimony payers/recipients, 394, 421

child support payers/recipients, 421

partnerships, 308

stock/bond dividends and reinvestments, 296

Redemption fees, to redeem or sell investments, 289

Remarriage, 57, 390, 393

Rental property  
     appraising value of, 297–300  
     dividing, 313–314  
     legal value, 288  
     responsibility for costs, 305, 313–314  
     revenue, on Schedule E, 110  
 Request for Earnings and Benefits Estimate Statement, 57  
 Request for inspection, 160  
 Request for production of documents, 160  
 Restraining orders  
     conflict created by, 68  
     how to obtain, 48  
     to prevent access to safe-deposit boxes, 70–71  
     to protect joint property, 72  
 Retainer fees, for lawyers, 77–78, 79  
 Retirement benchmarks, 242  
 Retirement planning, 229–230  
 Retirement plans/benefits, 229–265  
     401(k)s, 231  
     actuary services, 94  
     bankruptcy and, 260  
     benefits in payout status, 257  
     as cash source, 223–224, 258–259  
     COLAs, 245, 258  
     collecting/organizing documents, 100  
     deferred annuities, 235, 241  
     dividing, 244, 247–249, 259–263  
     double payments, 257–258  
     early withdrawal penalties, 249–250, 261  
     federal regulations, 237  
     financial value, 246–255  
     government-sponsored, 234, 254  
     as income vs. marital property, 237  
     Internet resources, 237  
     legal value, 243–246  
     nonqualified deferred compensation plans, 107, 236, 241, 329  
     present value factors, 450–455  
     QDROs and, 232, 234, 241, 259, 329  
     qualified plans, 239, 241  
     questions to ask attorney, 263  
     receiving early, 242  
     reviewing coverage, 242, 429  
     selecting, 237–238  
     separation and, 53–54  
     Social Security, 57, 236, 242  
     terminology, 239  
     understanding, 231  
     vesting, 256–257  
*See also* Defined benefit plans (pension plans);  
     Defined contribution plans; IRAs (Individual Retirement Accounts)

Rights of survivorship, 135  
 Risk  
     of buying out spouse's share of home, 192  
     of financial connections, 22–23, 53, 62, 347–348  
     of investing, 271  
     of limited partnerships, 307–308  
     risk-free nature of cash, 22–23  
 Rollovers, IRA, 255  
 Roth IRAs, 235, 242, 249, 254

## S

Safe-deposit boxes, jointly held, 70–71  
 Salaries, tips, other compensation  
     on cash flow worksheets, 175, 176  
     child support and, 368, 369  
     gender and wage gaps, 26  
     hiding assets via, 104  
     retirement plan value calculations and, 245  
     for separation/postdivorce income, 123  
     taxes on, 172  
     on W-2s, 106  
     wage garnishments, 377, 392, 422  
     *See also* Employee benefits (nonwage compensation); Stock options  
 Salary Reduction-Simplified Employee Pension (SAR-IRAs), 233, 250–251, 253  
 Salary savings retirement plans, 232, 250–251, 253  
 Same-sex couples  
     alimony for, 431  
     bankruptcy considerations, 348  
     legal issues, 4  
 Savings accounts. *See* Deposit accounts  
 Secondary custody (visitation rights), 17, 355, 423  
 Secured credit cards, 63  
 Security, of investments, 273  
 Separate Liability Election, rules, 145–146  
 Separate property, 158  
     in community property states, 144  
     family home as, 217–218  
     as security for spouse's debt, 206  
     taken to pay spouse's debt, 333  
 Separation, 48–59  
     alimony, 56  
     custody rights and, 49  
     debt/credit issues, 52–53  
     emotional issues, 30–41, 43, 48  
     income/income tax issues, 55, 123  
     investment/business asset issues, 56  
     legal and financial stages, 17  
     moving out of house, 31–32, 48, 49, 51, 58

- retirement plan issues, 53–54
- trial, 45, 48
- Separation agreements, 338, 343
- Separation date, 49–58
  - alimony and, 56
  - financial consequences, 48, 49–50
  - questions to ask attorney, 58–59
  - retirement plan value and, 246
  - state definitions of, 49–50
- SERPs (Supplemental Executive Retirement Plans), 329
- Settlement agreements
  - alimony vs. property settlement payments, 390
  - bankruptcy considerations, 338, 341, 343
  - defined, 14
  - drafting, 18
  - finalizing, 413–415
  - indemnity clauses, 150
  - life insurance beneficiaries named, 131
  - memorandum of understanding, 83
  - nonenforcement of, 14–15
  - offers and counteroffers, 410–413
  - QDROs and, 241
- Severance plans, 320
- Simplified Employee Pension IRAs (SEP-IRAs), 233, 241, 250–251, 253
- Simplified Incentive Match Plans for Employees (Simple IRAs), 233, 250–251, 253
- Single, tax filing status, 142, 144
- Singles clubs, 424–425
- Social Security benefits, 57, 236, 242
- Social Security numbers, name changes, 419
- Social Security wages and tips, 107
- Sole proprietorships, appraising value of, 94
- Spousal support. *See* Alimony
- Spread, stock options, 324
- State income taxes, 247, 249
- State laws
  - alimony guidelines, 381, 384, 431
  - asset valuation, 56
  - child support payments, 14, 110, 355, 368–369, 370–371
  - covenant marriages, 15
  - debts, responsibility for, 332, 333
  - divorce, 11
  - equitable distribution of property, 157–158, 191, 218, 333, 432
  - family home allocation, 190
  - fiduciary responsibility of spouses, 102
  - lawyer fee payment, 78
  - limited scope representation, 79
  - marital separation, 17
  - mediation requirements, 358
  - private investigator licensing, 95
  - property ownership, 156
  - researching, 17, 441–442
  - restraining order procedures, 48
  - retirement plans, 229, 237
  - same-sex couples, rights, 4, 431
  - separation dates, 49–50, 56, 58, 286–287
  - wills and divorce, 135
  - See also* Community property states
- Statutory stock options, 325–326
- Stockbrokers, 90
- Stock options, 321–329
  - capital gains income, 109–110
  - defined, 324
  - documents, 323
  - duration of options period, 328
  - exercise/exercise date, 324
  - exercise fees, 328
  - income for child support, 110
  - information resources, 329
  - nonstatutory (nonqualified), 326
  - overview, 103, 322–323
  - as property vs. income, 326–327
  - questions to ask attorney, 330
  - settlement agreement issues, 228
  - statutory, 325–326
  - tax consequences, 325–326
  - terminology, 324
  - unexercised, 327
  - vesting, 322, 324, 325
  - worth at divorce, 326–327
- Stocks, bonds, and mutual funds
  - dividends, 9, 108, 296
  - documenting dividends/reinvestments, 296
  - dollar cost averaging, 424
  - electronic transactions, 69
  - joint, freezing transactions, 69
  - legal vs. financial realities of ownership, 9
  - margin accounts, closing, 65–66
  - sample letter to broker, 70
  - tax basis, 273–275, 295–296
  - transferred in exchange for alimony, 399
  - value of, 9, 94, 287, 290–296
  - See also* Brokerage accounts; Investments
- Stress, understanding and reducing, 31–32
- Subpoenas, defined, 160
- Subpoenas duces tecum, defined, 160
- Summary plan descriptions, retirement plans, 239
- Supplemental Executive Retirement Plans (SERPs), 329

Survivor benefits

- pension plans, 260
- Social Security, 57, 236

## T

Taxable events, associated with divorce, 23–24

Tax basis

- of cash and cash equivalents, 290
- of family home, 207–210
- of investments, 273–275, 289
- of retirement benefits, 248
- of stocks, bonds, and mutual funds, 295–296

Tax deductions

- alimony and, 17, 153, 386–389
- child and dependent care credit, 147, 367–368
- dependent exemptions, 144, 367–368
- earned income credit, 147, 367
- family support payments, 400
- for fees paid to professionals, 95
- as filing status criterion, 148
- home office, 210
- for home ownership, 197–198
- to offset cost of raising children, 367–368
- on Schedule A, 108

Taxes, 140–154

- access to tax information denied by spouse, 140
- alimony and, 24, 153, 386–389
- annulled marriages and, 150
- capital gains, 9, 20, 109–110, 193, 194, 219
- child support and, 24, 144, 153, 367–368, 379
- estimating future taxes, 140–141
- filing status, 141–142, 143, 147–148, 429
- on health insurance contributions, 317
- on home sale proceeds, 20
- how to pay, 23–24
- on HSAs, 318–319
- on investment sales, 271–272, 273–275
- IRAs to cover payment of, 260
- legal vs. financial realities, 14
- liability for spouse's dishonesty, 145, 148
- name changes on tax returns, 419
- QDRO and, 379
- questions to ask tax advisers, 154
- settlement agreements, tax consequences, 18
- stock options and, 325–326
- written agreements between spouses, 154
- See also* IRS entries

Tax Increase and Reconciliation Act (2005), 147

Taxpayer Advocate's Office, 427

Taxpayer Relief Act (1997), 51

Tax professionals

- employee benefit issues, 330
- enrolled agents, 90–91, 449
- estimating tax bill, 140, 141
- resources, 449
- tax implications of divorce, 23, 154
- See also* Accountants

Tax rates (brackets)

- filing status and, 148, 429
- in housing cost calculations, 199
- state income taxes and, 247
- Tax Increase and Reconciliation, 147

Tax refunds

- dividing, joint returns, 23, 150–153
- expedited, 427
- how to handle, 103
- withheld for nonpayment of child support/  
alimony, 148, 376

Tax returns, 106–111

- examining past, 99–100, 102, 106, 108–111,  
141
- filing, 23–24
- how to keep, 111

Tax-sheltered annuities (TSAs)

- described, 232
- dividing, 261–262
- early withdrawal penalties, 249–250
- IRS regulations, 247–249
- QDROs and, 241
- value of, 243, 250–251, 253

Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF), 232

Temporary alimony agreements, 124, 125

Tenancy in common property, 67–68, 135

Therapists. *See* Counselors and therapists

Thrift plans, 232, 250–251, 253

Tickets to cultural/sports events, how to handle, 103

Time required to settle divorce, 21–22

Timeshares, how to handle, 106

Time value of money, 25

Tips. *See* Salaries, tips, other compensation

Title documents (deeds), 100, 134–135, 419

Trading fees, to buy or sell stocks/bonds, 289

Traditional IRAs, 235, 241, 254

TransUnion, 55

Trust/custodial agreements, 239

Trusts

- for children's support/education, 131
- REITs, 287, 297
- revising/replacing, 135–136, 429

TSAs. *See* Tax-sheltered annuities

Typing services, 93–94, 443

## U

Unbundled legal services (limited scope representation), 78–79

## V

Vacation pay, how to handle, 103

Vesting

retirement plans, 256–257

stock options, 322, 324, 325

Visitation rights (secondary custody), 17, 355, 423

## W

Wage garnishments, 377, 422

Wages. *See* Salaries, tips, other compensation

Wills, postdivorce review of, 135–136, 420, 429

Women vs. men, wage gap, 26

## Z

Zero Coupon (Corporate or Municipal) Bonds, 291

